VOL. 47 (2d Series) JULY 26, 1974 No. 7

FEDERAL COMMUNICATIONS COMMISSION REPORTS
(47 F.C.C. 2d)

Decisions, Reports, Public Notices, and Other Documents of
the Federal Communications Commission of
the United States

VOLUME 47 (2d Series)

Pages 763 to 862

Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

RICHARD E. WILEY, Chairman
ROBERT E. LEE
BENJAMIN L. HOOKS
ABBOTT WASHBURN
CHARLOTTE T. REID
JAMES H. QUELLO
GLEN O. ROBINSON

UNITED STATES GOVERNMENT PRINTING OFFICE • WASHINGTON, D.C.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - on a subscription basis

INDEX

Page
Bayhead Mobile Home Park; file No. CAC-1456 (FCC 74-589) 763
Belo Broadcasting Corp. et al.; docket No. 19744 et al. (FCC 74R-250) 766
CATV Technical Standards Performance Tests; docket No. 19659 (FCC 73-1046) 769
Chapman Radio & Television Co. et al.; docket No. 15461 et al. (FCC 74R-242) 775
Chapman Radio & Television Co. et al.; docket No. 15461 et al. (FCC 74D-19) 778
City of Columbia, Mo.; re request for reconsideration by Channel Seventeen, Inc. (FCC 74-712) 783
City TV Corp.; file No. SR-8698-N (FCC 74-715) 785
FM Table of Assignments; docket No. 19962 (FCC 74-725) 787
Intra-City Stations; docket No. 19623 (FCC 74-719) 791
Johansen, Paul A., Captain; re request for ruling as to renewal and inspection concerning cargo ship radiotelephony 796
Lackawanna Cablevision, Inc. et al.; file No. CAC-129 et al. (FCC 74-693) 798
Low Power Communication Devices; docket No. 17364 (FCC 74-703) 802
National Broadcasting Co., Inc.; file No. BR-42 et al. (FCC 74-697) 803
Nu-View, Inc.; file No. SR-17213 (FCC 74-713) 816
Pacific Broadcasting Corp.; re notice of apparent liability for forfeiture 818
Radio Beaumont, Inc.; re notice of apparent liability for forfeiture (FCC 74-676) 821
RKO General, Inc. et al.; docket No. 19991 et al. (FCC 74R-230) 824
RKO General, Inc. et al.; docket No. 19991 et al. (FCC 74R-247) 827
Southeast Arkansas Radio, Inc.; docket No. 19474 (FCC 74R-222) 835
Southeast Arkansas Radio, Inc.; docket No. 19474 (FCC 73D-37) 841
Spectrum Communications, Inc.; file No. CLCP-15 et al. (FCC 74-714) 849
Staunton Video Corp.; file No. CSR-507 (FCC 74-692) 851
Transmitter Identification Cards; RM-2022 (FCC 74-705) 856
Twin County Trans-Video, Inc.; file No. CAC-3372 et al. (FCC 74-592) 858
Western Union Telegraph Co.; file No. 21-DSE-P-74 et al. (FCC 74-610) 861

FCC 74-589

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
BAYHEAD MOBILE HOME PARK, LEON COUNTY, FLA.
For Certificate of Compliance
CAC-1456
FL256

MEMORANDUM OPINION AND ORDER

(Adopted June 5, 1974; Released June 12, 1974)

BY THE COMMISSION: COMMISSIONER QUELLO NOT PARTICIPATING.

1. On October 20, 1972, Bayhead Mobile Home Park filed an application for a certificate of compliance (CAC-1456) for a new cable television system in an unincorporated area of Leon County, Florida, within the Tallahassee, Florida, smaller television market. Bayhead proposes to carry the following television broadcast signals:

WCTV (CBS, Channel 6), Tallahassee, Florida
WALB-TV (NBC/ABC, Channel 10), Albany, Georgia
WJHG-TV (ABC, Channel 7), Panama City, Florida
WFSU-TV (Educ., Channel 11), Tallahassee, Florida
WDTB (NBC, Channel 13), Panama City, Florida [1]

The signal carriage proposed by Bayhead is consistent with Section 76.59 of the Rules. On March 19, 1973, Bayhead filed a "Request for Interpretive Ruling and Amendments to Application for Certificate of Compliance." In that pleading Bayhead asked the Commission to find that its proposed cable facility was not a "cable television system" as defined by Section 76.5(a) of the Commission's Rules and therefore, that it need not comply with the applicable Commission rules.[2] In the alternative, if its facility is found to be a "cable television system," Bayhead requests the grant of a certificate of compliance and a waiver of the franchise requirement of Section 76.31 of the Rules. No opposition has been filed against this application.

2. Bayhead proposes to erect a cable television facility wholly within its own premises, a mobile home park with a capacity for approximately two hundred and fifty (250) mobile home residences. Bayhead will own the land and lease lots to tenants who will supply their own mobile homes. Although Bayhead admits to meeting the definition of a cable television system in all other respects, it contends

---

[1] WDTB, Panama City, Florida, is currently operating under program test authority.

[2] Section 76.5(a) defines a "cable television system (or CATV system)" as follows: "Any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include (1) any such facility that serves fewer than 50 subscribers, or (2) any such facility that serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house."

that it will maintain common management and control of the development, and argues that it is therefore exempted from the requirements of the Commission's Cable Television Rules under the second exception of Section 76.5(a). In substance, Bayhead claims it leases "apartment dwellings" as contemplated by the Rules.

3. We find that Bayhead's proposed facility is a "cable television system" as defined by Section 76.5(a) and that Bayhead is consequentially subject to our cable television regulations. We cannot agree that mobile homes can be considered "apartment dwellings." There is a real and effectual difference between a single structure that has been wired to provide antenna services to its component residences, and an externally wired community of individual mobile homes. Moreover, in this particular case Bayhead admits that the individual mobile homes will be owned by the subscribers themselves, and that only the land upon which these residences will rest be owned by Bayhead. This circumstance must weigh heavily against any attempt to equate these mobile homes with "apartment dwellings" or to show true "common ownership, control, or management."

4. Bayhead seeks a waiver of the franchise holding requirement of Section 76.31 because it contends that the local franchising authority will not issue a franchise or "other appropriate authorization" which contains all of the required recitations and provisions outlined in Section 76.31. Accordingly, Bayhead requests special relief pursuant to Section 76.7 of the Commission's Rules to qualify under Para. 116, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326 (1972), which provides for case-by-case consideration where there is no franchise or other appropriate authorization available for the cable operator to submit in an application for a certificate of compliance. Pursuant to that paragraph, Bayhead has submitted, in lieu of such a franchise, an alternative proposal for assuring that the substance of our rules, and specifically Section 76.31, is complied with. On April 18, 1974, the Commission received a letter from F. E. Steinmeyer, III, Esquire, County Attorney for Leon County, Florida, regarding Leon County's authority to franchise cable television systems. Mr. Steinmeyer's letter states, in pertinent part:

> . . . [T]he Board [of County Commissioners] has requested that I advise you that at the present time the Board has no objection to the issuance of authority by the Federal Communications Commission to the Bayhead Mobile Home Park for the operation of a cable television system.
>
> . . . My advice to the Board was that it has the basic power to regulate through franchising, cable television systems, but had not adopted specific procedural authority to regulate such systems.
>
> We have previously outlined to the Commission in connection with an application by Video International for a franchise to operate a CATV System within Leon County, the position of the Board of County Commissioners in regard to financing such systems. Specifically, the Board is consenting to the use of public rights-of-way by CATV Systems for line distribution but does not wish to regulate such systems nor to impose fees upon their operations.[3]

---

[3] *Note, Video International, Inc.*, FCC 72-1187, 38 FCC 2d 966 (1972), in which the Commission conditioned a grant of a certificate of compliance to a cable television system utilizing county roads and property, and located in other unincorporated portions of Leon County, upon the submission of an appropriate franchise. A "License and Permit" to utilize county rights-of-way, fully consistent with the provisions of Section 76.31, was subsequently submitted and a certificate was consequently issued.

5. We find that the position taken by the Leon County Board of Commissioners, as expressed in Mr. Steinmeyer's letter, precludes a grant of a certificate of compliance to this cable television system. As we stated in Para. 47 of the recently adopted *Clarification of the Cable Television Rules and Notice of Proposed Rule Making and Inquiry*, FCC 74–384, 46 FCC 2d 175 (1974), the Commission will not grant special relief waivers of Section 76.31 in those instances where local governmental entities have the authority to issue franchises consistent with the provisions of Section 76.31, but choose not to do so.[4]

In view of the foregoing, the Commission finds that a partial waiver of Section 76.31 of the Rules and a grant of the above-captioned application would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the application for certificate of compliance (CAC–1456), filed by Bayhead Mobile Home Park, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

---

[4] Therein we stated, in pertinent part: ". . . Alternative proposals by the cable operator in such cases [where a franchising authority, while apparently having the authority to grant a franchise or other appropriate authorization consistent with our rules, declines to do so] will not be accepted. Where a franchising authority has the power to comply with our rules but does not, a certificate of compliance will not be issued."

FCC 74R-250

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of BELO BROADCASTING CORP. (WFAA-TV), DALLAS, TEX. For Renewal of Broadcast License	Docket No. 19744 File No. BRCT-33
WADECO, INC., DALLAS, TEX. For Construction Permit for New Television Broadcast Station	Docket No. 19745 File No. BPCT-4453

MEMORANDUM OPINION AND ORDER

(Adopted July 1, 1974; Released July 5, 1974)

BY THE REVIEW BOARD:

1. The Review Board has before it for consideration a petition to enlarge issues, filed May 8, 1974, by WADECO, Inc. (WADECO).[1] WADECO requests that issues in this proceeding be added against Belo Broadcasting Corporation (Belo) as follows:

(a) To determine whether the applicant complied with the provisions of Section 1.65 of the Commission's Rules by advising the Commission of equal employment opportunity complaints which have been filed against it.

(b) To determine whether the applicant has displayed lack of candor and made affirmative misrepresentations to the Commission regarding the existence of equal employment opportunity complaints which have been filed against it.

(c) To determine whether, in light of the facts adduced under the foregoing issues, Belo Broadcasting Corporation is qualified to remain licensee of WFAA-TV, Dallas, Texas.

2. WADECO concedes that its petition was not filed within fifteen days of publication of the designation Order as required by the Commission's Rules; however, it contends that the allegations upon which it relies concern violations of the Civil Rights Act of 1964, and that it has been unable to obtain information concerning complaints filed with the Equal Employment Opportunity Commission because Section 709(e) of the Civil Rights Act of 1964 prohibits disclosure of information involving employment complaints. Petitioner further contends that it proceeded diligently from the time it learned of the complaints which are described in the affidavits of John Sanchez and Henry Rameriz, Jr., and that its petition should therefore be considered on the merits. WADECO's allegations deal with very serious qualification questions and it has proceeded with diligence since it received the

---

[1] The Board also has before it comments, filed May 21, 1974, by the Broadcast Bureau; opposition, filed May 22, 1974, by Belo Broadcasting Corporation; and reply, filed June 11, 1974, by WADECO.

pertinent information. Accordingly, the merits of the petition will be considered.

3. In its petition, WADECO first notes that Section VI, Part III of the Commission's renewal application form requires all licensees to include:

> a brief description of any complaint which has been filed before any body having competent jurisdiction under Federal, State, territorial or local law, alleging unlawful discrimination in the employment practices of the applicant, including the persons involved, the date of filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

Petitioner also notes that Belo Broadcasting Corporation's (Belo) renewal application was filed on May 3, 1971; and that Belo made no reference therein to any complaints concerning its employment practices at the time the application was filed. However, WADECO points out, on April 5, 1974, Belo amended its application to reflect that an equal employment opportunity complaint had been filed against it on October 18, 1973, and the matter was decided January 29, 1974. Further, WADECO notes that the A. H. Belo Corporation was, until May of 1973, the licensee of Station WFAA-TV, at which time the Commission granted a *pro forma* application for transfer of control to Belo Broadcasting Corporation, a wholly owned subsidiary of the A. H. Belo Corporation. WADECO alleges that on December 27, 1971, John Sanchez filed an employment discrimination complaint against A. H. Belo Corporation with the Equal Employment Opportunity Commission in Dallas; that Henry Rameriz, Jr. filed an employment discrimination complaint against A. H. Belo Corporation in 1972; and that neither of these complaints has been settled. Petitioner notes that on the dates when the above described equal employment opportunity complaints were filed A. H. Belo Corporation was the licensee of WFAA-TV, and contends that Belo's failure to amend its application within thirty days of the filing dates of those complaints constitutes a violation of Section 1.65 of the Commission's Rules. Moreover, WADECO contends that the Rameriz and Sanchez complaints, considered together with the information submitted with Belo's June 14, 1973 amendment, disclose a poor record which WADECO has undertaken to conceal from the Commission; thus an issue inquiring into Belo's misrepresentation and its effect upon Belo's qualifications to be a Commission licensee should be added to the proceeding.

4. Belo, in opposition, contends that information concerning the Sanchez and Rameriz complaints was not submitted to the Commission pursuant to Section 1.65 of the Commission's Rules because neither of the complainants are or ever have been employees of Station WFAA-TV, and therefore the information is not encompassed by the reporting requirements of Section 1.65. Particularly, Belo argues that the legislative history of Section VI, Part III of the renewal application form makes clear that the information to be supplied is limited to the broadcast operations of licensees who are also engaged in nonbroadcast activities, citing footnote 12 of the Commission's Report and Order in Docket No. 18244, 18 FCC 2d 240, 16 RR 2d 1563,

(1969).[2] It also contends that in subsequent cases the Commission has declined to include issues where complaints of employees in non-broadcasting activities of the applicant have been alleged, citing *McClatchy Newspapers*, FCC 72-218, 23 RR 2d 1073, and *Regents of the University of California*, 44 FCC 2d 857, 29 RR 2d 28 (1974). Thus, Belo contends, it was not required to report the information pursuant to the instructions in the application form and there is therefore no basis for the addition of Section 1.65 or misrepresentation issues.

5. The issues requested by WADECO will be denied. The Board is satisfied that Belo's interpretation of the pertinent instruction of Section VI, Part III of the renewal application form is not unreasonable, particularly in view of footnote 12 to the order adopting the Commission's EEO rules. Thus the requested 1.65 issue is not required. Moreover, WADECO's pleadings provide no basis whatsoever for the requested misrepresentation issue. The Board notes, however, that the language relied on by Belo is contained in a discussion of information sought by the Commission in order "to obtain statistical data for the broadcast industry". We do not agree with Belo's assertion that unlawful discriminatory conduct by an applicant in non-broadcast activities is necessarily irrelevant to its qualifications to be a Commission licensee. The significance of such conduct depends upon all of the surrounding circumstances, *e.g.*, whether there have been recurring offenses, whether they were inadvertent, etc., and each case must be decided upon its individual merits. See *Uniform Policy Statement as to Violation by Applicants of Laws of the United States*, 1 RR (Part 3) 91:495 (1950).

6. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed May 8, 1974, by WADECO, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

---

[2] The pertinent portion of footnote 12 reads as follows: "We propose to obtain the requested information only for the broadcast operations of licensees also engaged in non-broadcast activities. . . ."

FCC 73-1046

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SUBPART K OF PART 76 OF THE COMMISSION'S RULES AND REGULATIONS WITH RESPECT TO PERFORMANCE TESTS AND TECHNICAL STANDARDS FOR CABLE TELEVISION SYSTEMS	Docket No. 19659

REPORT AND ORDER

(Adopted October 10, 1973; Released October 18, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER HOOKS DISSENTING AND ISSUING A STATEMENT

1. By *Notice of Inquiry and Proposed Rulemaking*, adopted December 13, 1972, 38 FCC 2d 506, the Commission began a proceeding to determine the impact of our technical standards performance tests requirement on smaller cable television systems. Three questions were posed:

> 1. What is a "smaller" cable television system in the context of the questions we are here raising? Should size be measured in terms of number of subscribers, annual gross revenue, miles of cable plant, or in some other manner?
>
> 2. Are there modifications of our existing technical standards or performance test requirements that might reduce the burden on smaller systems while at the same time assuring a reasonable level of quality service to subscribers?
>
> 3. What further steps can be taken to ease compliance with Sections 76.601(c) and 76.605 and be of particular help to smaller cable systems?

2. In response to the *Notice* the Commission received approximately 100 formal comments and numerous informal letters from interested parties. All points of view were given careful scrutiny. We do not propose to detail all the suggestions here; they were many and varied. Proposed definitions of smaller systems included: systems with under 100 subscribers, systems with under 1500 subscribers and systems with under 3500 subscribers. We were urged to require no performance testing for smaller systems, to require testing at less frequent intervals and to retain our requirements with no change. Above all, the major thrust of most comments was that, while the technical standards themselves are desirable, for the Commission to retain its performance tests requirements as written would wreak a financial havoc on some cable television systems.

3. At issue here is the difficulty of imposing upon an existing and in many cases still struggling industry a new program of regulation which is both time consuming and expensive. We are most sensitive to the financial plight of many smaller systems. On the other hand, cable television operators are engaged in the business of providing their services to the public and it is the Commission's responsibility to see that the business is conducted in the public interest. In light of the comments received and our own intensive investigation of this matter, we have decided to effect certain modifications in Section 76.601 of the Rules. These modifications should provide some relief to many systems. Some systems still find themselves financially hardpressed. Implicit in the result of our deliberations, however, is the simple principle that the time must come when financial hardships cannot be permitted to be used as an excuse for providing paying members of the public with a sub-standard product.

4. It is clear that because smaller cable systems generate less revenue, such systems will suffer a greater hardship in order to comply with our rules. Accordingly, we have given serious consideration to defining "small system" in terms of number of subscribers in order to fix a cut-off point for the application of some of our rules. But we are persuaded that this approach is not suitable. No matter what subscriber figure we might pick, rigid application of rules based on that figure would produce in many cases an unfair or irrational result. Figures based on other measurements such as number of plant miles, subscribers per mile, revenues, etc., would yield no more certain results. In fact, statistics show generally a direct relationship between these measurements and subscribership figures.[1]

5. We have decided, rather, for the purpose of this rulemaking, to classify systems as "old" or "new", i.e., whether the system was in operation before or after March 31, 1972, the effective date of the new Rules. Admittedly, there are some "old" systems that are quite large, some that can easily afford the expense of the tests and some that have personnel with sufficient expertise to perform the tests themselves. Our statistics, however, reveal that approximately 60 percent of these systems have 1,000 subscribers or less, and fewer than 10 percent have more than 3,500 subscribers.[2] In other words, most "old" systems are "small". And, moreover, because these systems do not have to comply with the technical standards until March 31, 1977, it is possible to adopt a more flexible approach to the problem of the performance tests without significant adverse impact on subscribers.

6. "New" cable systems (those that began operation after March 31, 1972), on the other hand, are required to comply with the technical standards of Section 76.605 of the Rules now. The vast majority of these systems had reason to expect, if not actual notice of, the Commission's new technical requirements. It would seem most inappropriate to require such systems, regardless of size, to meet the technical standards, but not to conduct the performance tests. The Commission is aware of the fact that although we extended the deadline for performing the tests until December 31, 1973, many systems, both new

---

[1] *A Cable Television Profile,* Sidney Lines, Technical Division Report No. T-7301.
[2] *Id.* at Figure 2.

and old, have been waiting for the outcome of this proceeding before making significant financial investments. For this reason, and in light of the action, we announce below concerning older systems, post-March 31, 1972 systems will now have an additional three months until March 31, 1974, to complete the performance tests.

7. Our treatment of old (pre-March 31, 1972) systems is intended to reflect both our appreciation of the immediate expense of conducting all the performance tests and our determination that by March 31, 1977, when the technical standards become applicable, these systems will be in a position to conduct all relevant performance tests. We have adopted an incremental approach, based on grouping tests by the relative expense of the equipment that systems will have to use to perform them. It is our belief that between now and 1977, systems will be able gradually to acquire or even rent the necessary equipment and learn to perform the tests themselves.

8. Performance tests to determine compliance with Sections 76.605 (a) (4), (5), (6), the portion of (9) concerning the ratio of visual signal level to system noise and (12) can be accomplished using the most basic equipment that all cable systems are assumed to possess and know how to use. Thus, these will be the first group of tests required of the older systems, and must be performed by March 31, 1974. Tests to determine compliance with Sections 76.605(a) (7), (8) and (11) require the addition of an oscilloscope and a signal generator, items that we believe most systems should, but, in fact, do not already own. These tests will comprise the second group and must be performed by March 31, 1975. Tests to determine compliance with Sections 76.605 (1), (2), and (3) require where indicated the use of an adequate frequency measuring device and will be applicable by March 31, 1976. As we explain below, the requirements for testing to determine compliance with the co-channel standard and the intermodulation standard of Section 76.605(a) (9) and (10), respectively, will be suspended pending further study of both the standards and their testing procedures. We certainly expect, however, that by March 31, 1977, studies of these standards will be completed and requisite modification, if any, announced.

9. Some parties have raised questions concerning several of our technical standards themselves, noting that in certain situations systems have no ability to control the particular measurements involved and therefore should certainly not be required to assume the burden of performing tests. Specifically, this type of argument has been made with respect to Section 76.605(a)(1), and (2) and (3) of the Commission's Rules.

10. These Sections relate to frequencies and associated tolerances of signals on Class I cable television channels. In the case of signals carried on "on-channel," whether introduced into the cable system by the use of simple amplifiers or by hetrodyne processor using a single local oscillator, the frequencies and their associated tolerances are exactly those received off-the-air. In the case of all signals carried on Class I cable television channels, where the intercarrier frequency relationship between the visual and aural carriers is unaltered by either the transmission of the signals to the cable system or by the cable system

itself, whether carrier either "on-channel" or "off-channel" the intercarrier separation remains that of the television broadcast station. In neither of these cases is an actual measurement of frequency required. In lieu thereof, a simple statement of fact made by the person performing the tests will suffice.

11. It should be noted that this statement represents no departure from our original policy, but is rather for purposes of clarification in light of the obvious doubts expressed to the Commission in this area. We do anticipate, however, that having clarified our policy, particularly with respect to intercarrier frequency separation, we will provide an incentive for the manufacturing of less expensive and less sophisticated instrumentation designed more specifically for cable television use.

12. It has become apparent that testing to establish compliance with the co-channel standard of Section 76.605(a)(9) and the intermodulation standard of Section 76.605(a)(10) presents the most significant problem in complying with our annual performance tests requirement for both old and new systems. Most experts for substantial reasons recommend the use of a high quality spectrum analyzer to perform these tests. We agree that the spectrum analyzer is a very accurate and efficient tool. Unfortunately it is very costly, and smaller cable systems in particular have voiced dismay at the prospect of spending what in some cases could amount to two years net income to buy one. In Section 76.609(f) of the Rules, the Commission suggested that these tests might in the alternative be performed with a field strength meter, a less precise, although infinitely less expensive device. Actually for many systems, much of the time, this use of the field strength meter might prove adequate. The fact remains, however, that under conditions where other aspects of cable system performance are near or at the limits set by our technical standards, a typical field strength meter as used currently in cable television system maintenance would, at best, yield an inconclusive measurement of the standards in question. Were it not for further action contemplated with respect to Sections 76.605(a)(9) and (10), we might consider sacrificing accuracy and encouraging the use of the field strength meter to perform the tests, if only to ease the financial impact of our Rules on many smaller systems. We find it unnecessary, however, to resolve the question at this time.

13. Further consideration of Section 76.605(a)(9) has made it apparent that the statistical nature of co-channel interference, varying, as it does, with propagation irregularities, requires a somewhat modified definition of our technical standard. In addition, the question of the presence or absence of a cross modulation standard as seemingly implied within 76.605(a)(10) of our Rules has arisen sufficiently often to suggest that a clearer statement on the part of the Commission is required. The Commission considers it appropriate to refer these matters to our Cable Television Technical Advisory Committee for its study, taking into account not only possible modification of these standards, but also consideration of the complexity and expense of the required tests. We shall suspend for all cable systems our requirement that compliance be demonstrated annually for that part of Section 76.605(a)(9) concerning the ratio of visual signal level to any un-

desired co-channel television signal and Section 76.605(a)(10), pending a report by the Committee and further consideration by the Commission staff. We emphasize that new systems will still be expected to comply with these standards. The suspension will affect only their related performance tests.

14. Another appropriate matter for further study is the many suggestions that visual test methods, using a television receiver and carefully prepared photographs or charts, might be developed in line of instrumentation to demonstrate compliance with several of the technical standards. While we remain unconvinced at the moment of the accuracy or adequacy of such methods, we are of the opinion that an attempt to develop visual tests should be strongly encouraged. If the adequacy can be demonstrated a simple, inexpensive and rapid means by which all systems regardless of size can demonstrate compliance with our technical standards will become available. In the event that the adequacy and/or the accuracy of such methods remains questionable, the results should still be of considerable value to the industry as a simple means of at least a check of cable system performance in the interval between actual measurements. We shall again ask the Cable Television Technical Advisory Committee for its guidance in this area, and will welcome comments or demonstrations from other interested parties.

15. In conclusion, we believe that the approach adopted in this Order is best calculated to provide a reasonable degree of relief to smaller cable television systems, while at the same time maintaining the integrity of the technical standards and assuring the public at least a minimum level of system performance. It is necessary to emphasize that while some systems may still feel overburdened by our requirements, even as amended, the Commission cannot simply turn its back on thousands of subscribers across the country. But for the matters we have referred for further study it is our intension that this action will establish dates certain for the various performance tests for older systems, clarify particular Rules for all systems and bring some finality to what has become too prolonged an effort to create standards of technical responsibility.

16. Authority for the rules adopted in the Appendix hereto is contained in Section 2, 3(a) and (b), 4(i) and (j), 301, 303, 307(b), 308, 309, and 403 of the Communications Act.

Accordingly, IT IS ORDERED, That the rules set forth in the Appendix hereto ARE ADOPTED, effective November 23, 1973. This proceeding will remain open for the purpose of further consideration of the matters discussed in paragraphs 13 and 14 above.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

Section 76.601, paragraph (e) is revised, and a note is added, to read as follows:

§ 76.601 PERFORMANCE TESTS

* * * * * * *

(e) Annual performance tests shall be conducted according to the following schedule:

Cable television systems in operation prior to March 31, 1972 . . . Tests to determine compliance with the standards of: Sections 76.605 (a)(4), (a)(5), and (a)(6), the portion of (a)(9) relating to the ratio of visual signal level to system noise, and (a)(12), by March 31, 1974. Sections 76.605 (a)(7), (a)(8), and (a)(11), by March 31, 1975. Sections 76.605 (a)(1), (a)(2), and (a)(3), by March 31, 1976.

Cable television systems commencing operations on or after March 31, 1972 . . . March 31, 1974.

NOTE.—Requirements for performing tests to determine compliance with the standards of Section 76.605(a)(9), insofar as it relates to the ratio of visual signal level to any undesired co-channel television signal, and (a)(10) are hereby suspended for all cable television systems, pending further action by the Commission.

DISSENTING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS

I only have one major point of difference with the majority decision regarding technical performance testing required of Cable Television Systems. I agree with the majority that we should differentiate between systems that were operational prior to March 31, 1972, and those that were not. This is indeed a good start in our attempt to afford cable subscribers the equality of service that we expect and that they deserve. I also agree with the determination not to differentiate between cable systems *solely* in terms of the number of subscribers served. However, I cannot come to grips with the decision to allow larger pre 1972 cable systems to postpone until 1977 technical performance testing of their systems. I would therefore require pre 1972 systems which serve more than 3000 subscribers to perform the identical technical testing that we are requiring of all systems which happened to begin operations subsequent to March 31, 1972.

FCC 74R-242

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WILLIAM A. CHAPMAN AND GEORGE K. CHAPMAN D.B.A. CHAPMAN RADIO & TELEVISION CO., HOMEWOOD, ALA.	Docket No. 15461 File No. BPCT-3282
BIRMINGHAM BROADCASTING CO., BIRMINGHAM, ALA. For Construction Permits	Docket No. 16761 File No. BPCT-3707

APPEARANCES

H. Gifford Irion and *L. Alton Denslow*, on behalf of Chapman Radio and Television Company; *Ellis J. Parker, III*, on behalf of Birmingham Broadcasting Company; and *Gerald M. Zuckerman*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted June 27, 1974; Released July 8, 1974)

BY THE REVIEW BOARD: BERKEMEYER, PINCOCK AND KESSLER.

1. This proceeding originally involved the mutually exclusive applications of Alabama Television, Inc. (Alabama), Chapman Radio and Television Company (Chapman), Birmingham Broadcasting Company (BBC), and Birmingham Television Corp. (WBMG), for permits to construct a new UHF television broadcast station in the Birmingham, Alabama area. The applications were designated for hearing by Commission Order, FCC 66-636, released July 20, 1966, 31 FR 10049, published July 23, 1966. An Initial Decision recommending a grant of the Alabama application was released on August 30, 1968, 19 FCC 2d 185, 14 RR 2d 6. Exceptions to the Initial Decision were filed with the Review Board, which released a Decision granting Alabama's application and concluding, *inter alia*, that Chapman was unqualified to be a Commission licensee because of inadequate financial and staffing proposals, 19 FCC 2d 157, 17 RR 2d 60, released August 28, 1969,[1] reconsideration denied, 20 FCC 2d 624, 17 RR 2d 1028, released November 25, 1969. The Board's Decision granting Alabama's application and denying the applications of the other three applicants, including Chapman, was then appealed to the Commission, which enlarged the hearing issues, remanded the case for further hearing, and dismissed the petitions for review of the Board's Decision as moot, 24 FCC 2d 282, 19 RR 2d 589 (1970). However, the Commission did not set aside the Board's Decision. Other issues were subsequently added,

---

[1] The Board's discussion of Chapman's financial qualifications and staffing proposal may be found at paragraphs 3-12 of the Decision, 19 FCC 2d at 159-164, 17 RR 2d at 65-70.

but all except one were mooted by the withdrawal of Alabama and WBMG from the proceeding.[2] The sole issue now remaining to be resolved is one added by the Board in a Memorandum Opinion and Order, released January 10, 1973, 38 FCC 2d 871, 26 RR 2d 395:

> To determine in light of the conviction of Oscar E. Hyde for violation of 18 U.S.C. Section 1951, whether Oscar E. Hyde and Birmingham Broadcasting Company are qualified to own and operate a television broadcast station in Birmingham, Alabama.

2. In an Initial Decision, FCC 74D-19, released March 12, 1974, Administrative Law Judge Jay A. Kyle concluded that Oscar E. Hyde was not qualified to be a Commission licensee in light of his conviction for violations of Federal law.[3] At the same time, the Judge concluded that BBC was qualified to own and operate a television station and that a grant of its application would serve the public interest, convenience, and necessity. The proceeding is now before the Review Board on exceptions filed by Chapman, challenging the Judge's favorable resolution of the issue regarding BBC and his denial of a petition for leave to amend, filed November 28, 1973, by Chapman. In its amendment, Chapman proposed, *inter alia*, new financial and staffing plans. The petition was denied by the Judge, by Memorandum Opinion and Order, FCC 73M-883, released July 31, 1973. No record request for oral argument was made and an oral argument does not appear to be warranted. We have reviewed the parties' arguments concerning Chapman's proposed amendment and will not disturb the Judge's determination that Chapman failed to establish good cause for the late filing of its amendment. We have also reviewed the Initial Decision in light of Chapman's exceptions, BBC's and the Broadcast Bureau's replies, and our examination of the record, and are satisfied that the findings of fact and conclusions of law fairly reflect the record and fully support the ultimate conclusion reached by the Administrative Law Judge, and that no useful purpose would be served by further discussion here. Therefore, except as modified in the rulings on exceptions contained in the attached Appendix, and upon finding that the public interest would be served by a grant of the application of BBC and by reaffirmation of the Board's prior denial of the Chapman application, the Initial Decision is adopted.

3. Accordingly, IT IS ORDERED, That the application of Birmingham Broadcasting Company (BPCT-3707) for a construction permit for a new UHF television broadcast station at Birmingham, Alabama, IS GRANTED, and the application of William A. Chapman and George K. Chapman, d/b as Chapman Radio and Television Company (BPCT-3282), IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
SYLVIA D. KESSLER, *Member, Review Board.*

---

[2] Alabama's petition for dismissal of application was granted by Order of the Presiding Judge, FCC 73M-327, released March 12, 1973; and WBMG's petition for dismissal of application was granted by Order of the Presiding Judge, FCC 73M-1001, released September 4, 1973.

[3] On March 10, 1969, Oscar E. Hyde was convicted on several counts of conspiracy to obstruct, delay and affect commerce by extortion and under color of official right and, as a result, was fined and sentenced to a term in prison.

APPENDIX

RULINGS ON EXCEPTIONS OF CHAPMAN RADIO AND TELEVISION COMPANY

Exception No.	*Rulings*
1	Denied. The Review Board will not reverse the Judge's determination that Chapman failed to establish good cause for the late filing of its amendment. Radio Ridgefield, Inc., FCC 74R-212, —— FCC 2d ——, released June 11, 1974. Chapman's petition for leave to amend was filed 6 years after its application was designated for hearing and 3 years after its financial and staffing proposals were rejected by the Board in its Decision denying Chapman's application. See paragraph 1 of this Decision. This extreme lack of diligence on Chapman's part is itself sufficient grounds for refusing to accept the amendment. See Erwin O'Connor Broadcasting Co., 22 FCC 2d 140, 18 RR 2d 820 (1970). Moreover, acceptance of the amendment at the remand stage of this proceeding would have disrupted the hearing process, since the proceeding was remanded for the purpose of adjudicating new questions, not for rehearing on issues that had already been decided by the Judge and the Board. See *Colorado Radio Corp.* v. *FCC*, 73 App. D.C. 225, 227, 118 F. 2d 24, 26 (1941). In sum, the Board is unable to conclude that the Judge abused his discretion in rejecting Chapman's amendment.
2	Denied. The Judge concluded that BBC was qualified to own and operate a television station in spite of its association with Oscar E. Hyde because: (1) in accepting Hyde into the corporation, the corporation had relied on the fact that his character had recently been investigated by several Federal agencies pursuant to his successful application for a bank charter; (2) the corporation had taken positive steps to remove Hyde as a principal and shareholder upon learning of his conviction: (3) Hyde had not informed BBC's other principals of his criminal conduct;[1] and (4) Hyde's activities did not involve broadcasting or any application before the Commission. See paragraphs 1–10 of the Judge's conclusions. The Board believes that the Judge's resolution of the issue is both reasonable and supported by the record.
3	Denied. Of the four original applicants, two have withdrawn from the proceeding, and a third, Chapman, has been disqualified by the Board. See paragraph 1 of this Decision. Thus, there is only one qualified applicant still remaining in the proceeding, i.e., Birmingham Broadcasting Company; therefore, there is no need to resolve the standard comparative issue. See Voice of Dixie, Inc., 45 FCC 2d 1027, 29 RR 2d 1127 (1974), reconsideration denied, FCC 74-604, —— FCC 2d ——, released June 19, 1974.
4	Granted in substance. See paragraph 3 of this Decision.
5	Denied. Chapman failed to demonstrate that summary judgment was warranted. See Section 1.251 of the Commission's Rules. In any event, the hearing has been concluded and an Initial Decision issued; therefore, Chapman's exception is, in effect, moot.

---

[1] See paragraph 10 of the Initial Decision wherein it is stated that "the Court found that Hyde did not inform other BBC principals of the activities which lead up to his conviction."

FCC 74D-19

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
WILLIAM A. CHAPMAN AND GEORGE K. CHAPMAN D.B.A. CHAPMAN RADIO & TELEVISION CO., HOMEWOOD, ALA.	Docket No. 15461 File No. BPCT-3282
BIRMINGHAM BROADCASTING CO., BIRMINGHAM, ALA.	Docket No. 16761 File No. BPCT-3707
For Construction Permits for New Television Broadcast Station	

APPEARANCES

L. Alton Denslow, Esq., *Donald L. Bowman, Esq.*, and *H. Gifford Irion, Esq.*, on behalf of Chapman Radio and Television Company; *Ellis J. Parker, III, Esq.*, on behalf of Birmingham Broadcasting Corporation; *Thomas Christensen, Esq.*, on behalf of Birmingham Television Corporation; *Richard K. Lyon, Esq.*, on behalf of Alabama Television, Inc.; and *Gerald M. Zuckerman, Esq.*, on behalf of Chief Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JAY A. KYLE

(Issued March 6, 1974; Released March 12, 1974)

PRELIMINARY STATEMENT

1. This is another chapter in a long drawn out proceeding that had had its inception in July 1966, at which time the Commission consolidated five applications and designated them for hearing (FCC 66-636). The background of the extended litigation which ensued as well as the original issue designated by the Commission is set out in detail in the Initial Decision by the Administrative Law Judge David I. Kraushaar, which was released on August 30, 1968 (FCC 68-D-58, 14 RR 2d 619, 19 FCC 2d 185). Exceptions were filed to the Initial Decision and the Review Board issued a decision on August 28, 1969 (19 FCC 2d 157). Subsequently, upon petition by Birmingham Broadcasting Company (BBC), the Commission enlarged the issues and remanded the proceeding for further hearing (24 FCC 2d 282). Upon a joint petition and following oral argument, the Review Board remanded the proceeding for further hearing (34 FCC 2d 159). However, the matters to be encompassed within the scope of the Board's remand have been mooted by the subsequent dismissal of the applications involved. There would be no need for another Initial Decision, except for the specification of the following issue, which occurred while the proceeding was on remand:

To determine in light of the conviction of Oscar E. Hyde for violation of 18 U.S.C. Section 1951, whether Oscar E. Hyde and Birmingham Broadcasting Company are qualified to own and operate a television broadcast station in Birmingham, Alabama.

2. This issue was specified by the Review Board through a Memorandum Opinion and Order (FCC 73R–8), released January 10, 1973. The burden of proceeding with the introduction of evidence was placed on Birmingham Television Corporation and Alabama Television, Inc. However, both of these applicants withdrew from the proceeding before the evidentiary hearing.

3. The hearing on the new issue was held on January 8 and 22, 1974, with the record being closed on the latter date.

4. Proposed findings of fact and conclusions of law were filed on February 1, 1974 on behalf of the Commission's Broadcast Bureau and subsequently on February 6, 1974, both Chapman and BBC filed proposed findings of fact and conclusions of law on February 20, 1974. Chapman filed reply findings of fact and conclusions of law on February 20, 1974.

FINDINGS OF FACT

5. Oscar E. Hyde was an original stockholder-officer-director of BBC. There were originally two other stockholders-officers-directors of BBC. Prior to the designation order, four other individuals became stock subscribers. The first Initial Decision by Judge Kraushaar reflects that Hyde was a 26.7% owner of BBC and additionally was controller of the corporation. The Initial Decision indicates that Hyde had resigned on a temporary basis as secretary-treasurer and director, but retained his ownership interest as well as having remained on the proposed BBC staff.

6. Hyde had been president and chairman of the board of the American National Bank in Birmingham. He was director of another bank, president and board chairman of an investment company, and was officer and director of various finance and investment companies. Hyde's troubles stemmed from the time when he was indicted for activities which occurred between December 1, 1962 and October 15, 1966. He was indicted for allegedly having conspired with others to obstruct, delay and affect interstate commerce as well as for having allegedly extorted money from various applicants before the Alabama Public Service Commission, who were seeking Certificates of Public Convenience and Necessity from that body. The evidentiary record indicates that there were other charges against Hyde which are not here set out.

7. The fact is that on March 10, 1969 Hyde was convicted on several counts of "conspiring to obstruct, delay, and affect commerce . . . by extortion and under color of official right." As a result thereof, Hyde was sentenced to prison for eight years under each of four counts, which were to run concurrently. Also, he was fined $10,000 on both of two counts.

8. Birmingham Broadcasting Company brought a civil suit against Hyde on December 4, 1972 in the United States District Court for the Northern District of Alabama. One year later, on December 4, 1973, judgment was entered against Hyde. The Federal Court or-

dered Hyde to surrender all stock in the corporation to the corporation's treasurer, which he held at that time. The record indicates that Hyde had assigned his ownership interest in the corporation to Miles College in 1970. For further details of this transaction, see 26 FCC 2d 891 (1970).

9. Generally speaking, Hyde was enjoined from exercising any influence or judgment on the corporation and was prohibited from becoming involved in any manner in the affairs of the applicant. Additionally, he was barred from obtaining any payment for services performed prior to the judgment.

10. The Broadcast Bureau in its proposed findings of fact points out that the judgment against Hyde

> . . . recites the court's findings that at the time of BBC's incorporation Hyde was accepted by the other organizers only after they had investigated and considered his character. Moreover, the other BBC founders relied on the fact that Hyde had recently successfully obtained a bank charter which entailed an investigation of Hyde's character by Federal agencies. *The Court found that Hyde did not inform other BBC principals of the activities which lead up to his conviction.* (Emphasis supplied).

CONCLUSIONS

1. Oscar E. Hyde was a moving force in the incorporation of Birmingham Broadcasting Corporation. The record shows that he was a 26.7% owner of the applicant corporation. Although the Initial Decision of Judge Kraushaar concludes that Hyde had resigned on a temporary basis as secretary-treasurer and director; he, nevertheless, remained on the proposed Birmingham Broadcasting Corporation staff in addition to retaining his stock ownership.

2. As Hyde is a convicted felon, the only conclusion that can be reached in respect to him is that he does not possess the character qualifications to be a licensee. Therefore, it must be determined here whether Hyde's conviction eliminates the applicant (BBC) on character grounds.

3. BBC's attempts to remove Hyde from its application, by amendment, have been unsuccessful. See FCC 67M-122, released January 24, 1967; FCC 70M-1411, released October 14, 1970, affirmed 26 FCC 2d 891 (1970) and; FCC 73M-619, released May 25, 1973.

4. A recent Court of Appeals decision may be considered in resolving the Hyde matter. In *T.V. 9, Inc.* v. *FCC* —— F. 2d ——, 28 RR 2d 1115 (1973), the Court of Appeals considered the qualifications of Mid-Florida Television Corporation, an applicant for a television station in Orlando, Florida. Mid-Florida was one of five applicants for the facility. One of Mid-Florida's principals, Martin Segal, was indicted for allegedly having violated Federal and State gambling and conspiracy laws. At the time of the indictment, Segal was the secretary, director, and the general counsel of Mid-Florida. He owned less than 2% of the corporation. The Commission permitted Mid-Florida to amend its application to remove Segal as a participant and the applicant was thereby relieved of responsibility for any of Segal's activities.

5. The Court of Appeals as it pertains to Segal in Mid-Florida, has this to say:

> We think our duty is clear. We note first the fact that Mr. Segal's active connection with Mid-Florida has been suspended, and we assume perhaps ended, regardless of the fate of the petition to amend. Moreover, the facts which gave rise to that petition occurred after the Mid-Florida application was filed. For these reasons we do not distrub the Commission's grant of the petition to amend. We disagree, however, that permitting the amendment mooted the significance of the facts which gave rise to it with respect to the applicant's character or mooted any other consideration relevant to the matter. (Footnote omitted) (p. 1129).

6. In the Mid-Florida case, the Court further held that the Commission erred in failing to permit a reopening of the record for "a thorough inquiry into the character qualifications of Mid-Florida growing out of the association of Mr. Segal as a participating principal of the applicant when he was its part owner, a director, an officer and its general counsel."

7. The Mid-Florida and the BBC cases are particularly similar. As the Broadcast Bureau points out in its proposed findings of fact and conclusion of law, BBC cannot escape all responsibility for Hyde. There are other matters to be considered as it relates to Hyde. After a governmental investigation into his character, he was granted a bank charter and apparently BBC considered this factor in their acceptance of Hyde. It is also observed that Hyde's criminal conduct did not pertain to broadcasting or any application before the Commission. Further, BBC has indicated a positive desire to remove Hyde from the application and it has obtained a Court order preventing Hyde from participating in the affairs of BBC. As it is heretofore noted, Hyde long ago divested himself of his BBC stock ownership.

8. It is concluded that although BBC accepted Hyde as an officer, director, and stockholder in its application, apparently without knowledge of his criminal conduct, this does not in itself disqualify BBC as a Commission licensee.

9. The *TV-9, Inc.* case heretofore referred to makes it clear that the Commission must evaluate Hyde's effect on BBC's comparative qualifications, if this proceeding is determined on comparative grounds. The other remaining applicant, Chapman Radio and Television Company, has been found unqualified by the Review Board on its financial and staffing proposals. See *Chapman Radio and Television Company et al.*, (19 FCC 2d 157). In this case comparative considerations are not applicable.

10. Therefore, the conclusion is here reached that Birmingham Broadcasting Company should not be disqualified as an applicant in this instant proceeding in view of the Hyde issue which has been heretofore discussed. Hyde is not part or parcel of the applicant and his criminal activities of the past therefore should not be held as a barrier to the grant of the instant application.

11. In view of the foregoing findings of facts and conclusions of law, and upon careful evaluation of the record in this proceeding, IT IS CONCLUDED that a grant of the application to Birmingham Broadcasting Company to own and operate a television broadcast station in Birmingham, Alabama will serve the public interest, convenience, and necessity and IT IS FURTHER CONCLUDED in

light of the conviction of Oscar E. Hyde for violation of 18 U.S.C. Section 1951 that he is not qualified to own and operate a television broadcast station in Birmingham, Alabama.

Accordingly, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by the applicant or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's Rules, Birmingham Broadcasting Company IS QUALIFIED to own and operate a television broadcast station in Birmingham, Alabama while Oscar E. Hyde IS NOT SO QUALIFIED.

FEDERAL COMMUNICATIONS COMMISSION,
JAY A. KYLE, *Administrative Law Judge.*

FCC 74–712

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
PETITION OF THE CITY OF COLUMBIA, MO.
For Declaratory Ruling

MEMORANDUM OPINION AND ORDER

(Adopted July 2, 1974; Released July 10, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER QUELLO ABSTAINING FROM VOTING.

1. On May 8, 1974, Channel Seventeen, Inc., licensee of Station KCBJ-TV, Columbia, Missouri, filed a "Request for Reconsideration of Memorandum Opinion and Order," directed against the Commission's opinion in *City of Columbia, Missouri*, released April 5, 1974, FCC 74–302, 46 FCC 2d 108, which granted a declaratory ruling that future cable televison systems operating at Columbia, Missouri, were authorized to carry the following television broadcast stations, pursuant to Section 76.65 of the Commission's Rules:[1] KTVI (ABC), KMOX-TV (CBS), KPLR-TV (Ind.), and KSD-TV (NBC) St. Louis, and KCPT (Educ.) Kansas City (formerly Television Broadcast Station KCSD). On May 28, 1974, the City of Columbia, Missouri, filed the "Reply of Columbia, Missouri, to Motion for Reconsideration." Thereafter on June 12, 1974, Channel Seventeen, Inc., filed a "Reply to Opposition to Motion for Reconsideration."

2. Channel Seventeen argues: that the Commission should have required a valid franchise as a pre-requisite to notification pursuant to former Section 74.1105 of the Rules; that Station KCBJ-TV operated at a loss in 1973, and cannot withstand competition from distant signals; that cable television systems in smaller television markets, such as Columbia, are not entitled to carry the distant signals listed above under the Commission's present regulations; that three full network stations now are licensed to Columbia; that there no longer is any need to import distant signals; and that Channel Seventeen was not served with the request for declaratory ruling, which it claims actually was filed by the Mitre Corporation, rather than by the City of Columbia.

---

[1] Section 76.65 provides that: "The provisions of §§ 76.57, 76.59, 76.61 and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972: *Provided, however,* That if carriage of a signal has been limited by Commission order to discrete areas of a community, any expansion of service will be subject to the appropriate provisions of this subpart. If a cable television system in a community is authorized to carry signals, either by virtue of specific Commission authorization or otherwise, any other cable television system already operating or subsequently commencing operations in the same community may carry the same signals. (Any such new system shall, before instituting service, obtain a certificate of compliance, pursuant to § 76.11.)."

3. In paragraph 5 of our previous Memorandum Opinion and Order, we noted that the Commission's 1966 regulations did not require a franchise prior to notification pursuant to Section 74.1105; a system thus could acquire valid grandfather rights without holding a franchise. Likewise, Channel Seventeen has not attempted to support its claim of economic injury with specific data, as required by the Commission; we therefore must also reject this argument. Cf. *Central New York Cable TV, Inc.*, FCC 67-1381, 11 FCC 2d 150. As we noted in our previous opinion, Section 76.65 of the Commission's Rules specifies that the distant signals provision for smaller markets" . . . shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972. . . ." In the event that a cable television system applies for a certificate of compliance in Columbia, however, Channel Seventeen will still be able to oppose its application and make a showing that in the circumstances at Columbia additional signals would not be in the public interest. Finally, the Commission has considered each of Channel Seventeen's arguments,[2] many of which were raised in two petitions for special relief filed March 15, 1972, (SR-37249 and SR-37250), and the rest of which were raised in the subject "Petition for Reconsideration." Any possible lack of service of pleadings upon Channel Seventeen, therefore, has caused it no disadvantage.

In view of the foregoing, the Commission finds that reconsideration of its opinion in *City of Columbia, Missouri*, FCC 74-302, 46 FCC 2d 108, would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "request for Reconsideration of Memorandum Opinion and Order," filed May 7, 1974, by Channel Seventeen, Inc., licensee of Television Broadcast Station KCBJ-TV, Columbia, Missouri, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

---

[2] There is no indication that Mitre Corporation is involved in this proceeding.

FCC 74-715

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
CITY TV CORP., MAHANOY CITY, PA.
Request for Waiver
} SR-8698-N

MEMORANDUM OPINION AND ORDER

(Adopted July 2, 1974; Released July 10, 1974)

BY THE COMMISSION:

1. On August 26, 1969, City TV Corporation, operator of a cable television system at Mahanoy City, Pennsylvania, filed a letter (SR-8698-N) requesting waiver of Section 76.55(a)(3), (formerly Section 74.1103(d)(3)) of the Commission's Rules, which provides that a "must-carry" signal be carried, on request of a station licensee, on no more than one channel.[1] On September 22, 1969, WBRE-TV, Inc., licensee of Station WBRE-TV, Wilkes-Barre, Pennsylvania, filed an "Opposition to Section 1103(d)(3) Waiver Request".

2. City TV operates a twelve-channel cable television system which provides approximately 1189 subscribers with the following television signals:

WBRE-TV (NBC, Channel 28) Wilkes-Barre, Pennsylvania
KYW-TV (NBC, Channel 3) Philadelphia, Pennsylvania
WGAL-TV (NBC, Channel 8) Lancaster, Pennsylvania
WCAU-TV (CBS, Channel 10) Philadelphia, Pennsylvania
WDAU-TV (CBS, Channel 22) Scranton, Pennsylvania
WCBS-TV (CBS, Channel 2) New York, New York
WHP-TV (CBS, Channel 21) Harrisburg, Pennsylvania
WBNG-TV (CBS, Channel 12) Binghamton, New York
WNEP-TV (ABC, Channel 16) Scranton, Pennsylvania
WABC-TV (ABC, Channel 7) New York, New York
WPVI-TV (ABC, Channel 6) Philadelphia, Pennsylvania
WPIX (Ind., Channel 11) New York, New York
WNEW-TV (Ind., Channel 5) New York, New York
WOR-TV (Ind., Channel 9) New York, New York
WVIA-TV (Educ., Channel 44) Wilkes-Barre, Pennsylvania
WLVT-TV (Educ. Channel 39) Bethlehem, Pennsylvania

City TV affords Station MBRE-TV network program exclusivity protection against simultaneously duplicating NBC signals; however, it carries WBRE-TV's signal on Channel 3 as well as Channel 11, at those times that it deletes the signal of Station KYW-TV, Philadelphia, Pennsylvania to protect WBRE-TV's network programming.

---

[1] Section 76.55 of the Rules provides in pertinent part: (a) Where a television broadcast signal is required to be carried by a cable television system, pursuant to the rules in this subpart:

(3) The signal shall, on request of the station licensee or permittee, be carried on the system on no more than one channel.

3. City TV argues that to provide Station WBRE-TV with single channel carriage would be an unnecessary burden serving no useful purpose. According to City TV, compliance with the request would disrupt subscriber viewing habits and weaken City TV's competitive position vis-a-vis a larger Mahanoy City cable television system which provides uninterrupted programming on all its channels. In addition, City TV alleges that it has benefited Station WBRE-TV by carrying the signal on Channel 11 (a more favorable dial position than its off-the-air channel allocation warrants), that carriage on two channels is financially advantageous to Station WBRE-TV, and that without cable television the WBRE-TV signal would not be received in Mahanoy City. Moreover, City TV argues that any possible harm to WBRE-TV is *de minimis*, since City TV serves so few subscribers. We reject City TV's arguments for the following reasons.

4. The slight viewer inconvenience which may result from carriage of Station WBRE-TV's signal on a single channel is insufficient to persuade us that the requested waiver is appropriate. City TV's claim of possible competitive disadvantage within Mahanoy City is speculative and unsupported by facts. We note that City TV now carries the signals of 16 stations. Despite the alleged benefits which Station WBRE-TV may receive from City TV, we require no showing of need or economic justification to invoke our single channel carriage requirements.

In view of the foregoing, we find that grant of the requested waiver of Section 76.55(a)(3) of the Commission's Rules would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the petition filed by the City TV Corporation on August 26, 1969, IS DENIED.

IT IS FURTHER ORDERED, That City TV Corporation IS DIRECTED to comply with the requirements of Section 76.55(a)(3) of the Commission's Rules on its cable television system at Mahanoy City, Pennsylvania, within thirty (30) days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74-725

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS. (LEHIGH ACRES, FLA.; MONTICELLO, FLA.; ROCKWELL CITY, IOWA; MILLINOCKET, MAINE; AGUADA, PUERTO RICO; AND ST. HELENA, CALIF.)	Docket No. 19962 RM-2232, RM-2242, RM-2293, RM-2246, RM-2240, RM-2247, RM-2241

REPORT AND ORDER

(Proceeding Terminated)

(Adopted July 2, 1974; Released July 8, 1974)

BY THE COMMISSION:

1. The Commission has under consideration its Notice of Proposed Rule Making adopted March 7, 1974, and published in the Federal Register March 15, 1974 (39 Fed. Reg. 9989), inviting comments on a number of changes in the FM Table of Assignments (Section 73.202 (b) of the Rules). With the exception of the proposal for Aguada, Puerto Rico, all proposals were unopposed. Except as noted, the population figures were taken from the 1970 U.S. Census. The communities, channel assignments proposed, and petitioning parties are as follows: *RM-2232* Channel 257A to Lehigh Acres, Florida (Broadcast Management, Inc.); *RM-2293* Channel 296A to Lehigh Acres, Florida (Hudson Communications Corporation); *RM-2240* Channel 292A to Monticello, Florida (Dr. Claud Anderson); *RM-2241* Channel 288A to Rockwell City, Iowa (Francis N. Donnelly); *RM-2242* Channel 249A to Millinocket, Maine (Katahdin Radio, Inc.); *RM-2246* Channel 288A to Aguada, Puerto Rico (Aurio Matos); *RM-2247* Channel 269A to St. Helena, California (Young Radio, Inc.).

2. In each of the above cases, the petitioning party seeks the assignment of a first channel without requiring any other changes in the FM Tables of Assignments. Each assignment can be made in conformance with the provisions of the Commission's minimum mileage separation rule. The Canadian Government has given its concurrence to the assignment of Channel 269A to Millinocket, Maine.

3. We have given careful consideration to all comments, supporting statements and other pleadings, and find it in the public interest to assign the proposed FM channels to the above-listed communities except for Lehigh Acres, Florida, to which only one channel instead of the proposed two will be assigned and Monticello, Florida, to which none will be assigned. (The proponent for the Monticello channel

has indicated that he is no longer interested in establishing a radio station there and suggests termination of rule making for Monticello. Thus the petition filed by Dr. Claud Anderson will be dismissed.)

4. In the Notice of Proposed Rule Making herein we set out the economic and other information pertaining to the need for a first FM assignment in each of the communities. We shall, therefore, not repeat it here in this document. However, because of adverse comments, the proposals for Lehigh Acres, Florida, and Aguada, Puerto Rico, are discussed below.

5. *Lehigh Acres, Florida.* With reference to the two separate petitions filed, each proposing the assignment of a first FM channel to Lehigh Acres, Florida (population 11,250),[1] we stated in our Notice of Proposed Rule Making that it was not clear from the petitions whether, if two channels are assigned to Lehigh Acres, each petitioner would be willing to build a station there. We requested the petitioners to furnish information on this point as well as information as to whether Lehigh Acres could support two FM stations. In comments filed by Broadcast Management, Inc. (RM-2232) (petitioner proposing assignment of 257A) petitioner does not clearly address itself to our request but states that there is a great need for a local FM service in Lehigh Acres and that, if Channel 257A is assigned, it will immediately apply for a permit to construct and operate a station. In comments filed by Hudson Communications Corporation (Hudson) (RM-2293) (petitioner proposing assignment of Channel 296A), petitioner states that, although Lehigh Acres is a growing community, it does not believe that the public interest would be served by assigning two Class A FM channels there, at least for the foreseeable future. Hudson contends there is already a fulltime AM station in the market and there are numerous AM and FM services available from stations located in outside communities. It notes that, if two channels are assigned, it will not become an applicant for one of these channels for it does not believe, at this stage of growth in the Lehigh Acres area, that three local services would be in the public interest. (Lehigh Acres presently has an unlimited time AM station licensed to Broadcast Management, Inc., the other petitioner for a first FM channel in this proceeding.) Hudson further states that, if only one channel is assigned and if no other applicant files for the channel, it reaffirms that it will file for and build the station; however, if there are multiple applicants it will determine whether or not to file an application by assessing its likelihood of prevailing in a comparative hearing and the delays in initiating service that a comparative hearing would cause.

6. In view of the foregoing, it appears that it would not be in the public interest to assign two channels to Lehigh Acres at this time. Interested parties may petition for an additional assignment in the future if the need for another station should arise. We believe that Channel 296A should be assigned to Lehigh Acres. Channel 296A appears to be a better choice than Channel 257A because there would be a greater flexibility in the siting of the station.

---

[1] Population figure is from the publication, *Questions and Answers about Lehigh Acres*, distributed by Lehigh Acres Development, Inc., Developers and Managers of Lehigh Acres, Florida. The 1970 U.S. Census figure was 4,394.

7. *Aguada, Puerto Rico.* The Notice, on the basis of a petition filed by Aurio Matos, proposed the assignment of Channel 288A to Aguada, Puerto Rico. Mr. Matos notes that Aguada, with a population of 4,590, is located on the northwestern coast of Aguada Municipio (population 25,658). He filed comments in support of the proposed assignment and reiterated his intent to promptly apply for consent to construct a station if authorized by the Commission.

8. A timely opposition to the proposal was filed by Ricardo Vega, licensee of FM Station WTPM(FM), Aguadilla, Aguadilla Municipio, Puerto Rico. Aguadillo is located approximately 4½ miles northeast of Aguada. Mr. Vega states that Mr. Matos is in error when he states that Aguada is the site of numerous industries. Mr. Vega notes that the exact number is 5 small manufacturing plants. He contends that the major civic and religious organizations in Aguada are being satisfactorily served by WTPM; that this station is considered all over the area as the station of Aguada; that approximately 65% of the commercial firms of Aguada use WTPM as the principal media; that all the major civic, religious and official entities use WTPM for promotional needs; that it is generally accepted that WTPM is the station with the largest audience in Aguada; and that WTPM operates within the municipal limits of Aguada. Mr. Vega states that the assignment of a new channel in this area will severely damage the quality of the service being rendered by WTPM to the Aguada community and that the very existence of WTPM will be endangered.

9. In reply comments petitioner responds to the opposition filed by Ricardo Vega. Petitioner states that the basic issue from Mr. Vega's standpoint seems solely an economic one and notes that Mr. Vega has gone to great lengths to discredit the economic stability of the Municipio of Aguada. Petitioner contends that Mr. Vega's opposition is not for the betterment of the public interest, but it is for the protection of his own financial interests and well being. Petitioner adds that, despite the inferences of Mr. Vega, the record in this proceeding shows that the community leaders of Aguada agree that a broadcast facility is urgently needed there.

10. Although the opponent alleges that there is no economic basis for establishing an FM station Aguada, it presents no data to support this allegation and does not detail what effect an operation of an FM station at Aguada would have on the operation and programming of existing stations in Aguadilla. In any event, we believe that such an economic issue would be more appropriately considered in connection with an application for a construction permit for use of the channel. We also believe that since Aguada and the Municipio of Aguada do not have a broadcast station, it would be in the public interest to provide for an FM station as an outlet for local expression. The requested channel assignment can be made without affecting any existing assignments and conforms with the Commission's minimum mileage separation rule.

11. Authority for the adoption of the amendments contained herein appears in Sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

12. In view of the foregoing, IT IS ORDERED, That effective August 16, 1974, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, IS AMENDED to read as follows:

City:	*Channel No.*
California—St. Helena	269A
Florida—Lehigh Acres	296A
Iowa—Rockwell City	288A
Maine—Millinocket	249A
Puerto Rico—Aguada	288A

13. IT IS FURTHER ORDERED, that the petition for rule making filed July 30, 1973, by Dr. Claud Anderson for FM Channel 292A IS DISMISSED.

14. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-719

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 78 OF THE COMMISSION'S RULES AND REGULATIONS TO ADD AN ALTERNATIVE CHANNEL ARRANGEMENT, REDUCING THE BANDWIDTHS AVAILABLE FOR INTRA-CITY STATIONS, AND ADDING CERTAIN OTHER CLARIFICATIONS	Docket No. 19623 RM-1936

MEMORANDUM OPINION AND ORDER

(Adopted July 2, 1974; Released July 3, 1974)

BY THE COMMISSION:

1. By Notice of Proposed Rule Making, adopted November 1, 1972, 37 FCC 2d 854, the Commission proposed amendments to Sections 78.18, 78.103, 78.111 and 78.115 of the Commission's Rules and Regulations to: (1) provide an alternative channel arrangement for Local Distribution Service (LDS) stations in the Cable Television Relay (CAR) Service which is compatible with potential frequency plans within cable television systems, (2) clarify the Rules to make clear the situations in which nonadjacent channels may be used for LDS station operation, (3) provide a 12.5 MHz channel assignment plan for FM and double-sideband AM systems of transmission, (4) specify new frequency tolerance provisions and (5) limit all stations in the CAR service that do not use frequency-division multiplexed/FM (FDM/FM) systems of transmission and have path lengths less than 10 miles to a 12.5 MHz authorized bandwidth. Items (1) and (2) above were initiated by a Theta-Com of California Petition for Rule Making RM-1936. Items (3) thru (5) were added *sua sponte* by the Commission because these matters were "timely both in terms of the potential for congestion being created by these intracity stations in major cities and in terms of the developing technology which it appears will make this bandwidth reduction both technically and economically feasible over the distances involved in typical intracity applications." *Id.* at 857.

2. By *Report and Order*, adopted June 13, 1973, 41 FCC 2d 464, the Commission adopted amendments to Sections 78.5, 78.18, 78.103, 78.111 and 78.115 of the Commissions Rules and Regulations. These amendments were essentially those published in the *Notice of Proposed Rule Making*. However, at the urging of Theta-Com and others, minor changes were made to provide a measure of flexibility by allowing authorization of variations to the Rules upon adequate showing on a case-by-case basis. See, e.g., Section 78.18(e) of the Rules.

12. In view of the foregoing, IT IS ORDERED, That effective August 16, 1974, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, IS AMENDED to read as follows:

City:	*Channel No.*
California—St. Helena	269A
Florida—Lehigh Acres	296A
Iowa—Rockwell City	288A
Maine—Millinocket	249A
Puerto Rico—Aguada	288A

13. IT IS FURTHER ORDERED, that the petition for rule making filed July 30, 1973, by Dr. Claud Anderson for FM Channel 292A IS DISMISSED.

14. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-719

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 78 OF THE COMMISSION'S RULES AND REGULATIONS TO ADD AN ALTERNATIVE CHANNEL ARRANGEMENT, REDUCING THE BANDWIDTHS AVAILABLE FOR INTRA-CITY STATIONS, AND ADDING CERTAIN OTHER CLARIFICATIONS	Docket No. 19623 RM-1936

MEMORANDUM OPINION AND ORDER

(Adopted July 2, 1974; Released July 3, 1974)

BY THE COMMISSION:

1. By Notice of Proposed Rule Making, adopted November 1, 1972, 37 FCC 2d 854, the Commission proposed amendments to Sections 78.18, 78.103, 78.111 and 78.115 of the Commission's Rules and Regulations to: (1) provide an alternative channel arrangement for Local Distribution Service (LDS) stations in the Cable Television Relay (CAR) Service which is compatible with potential frequency plans within cable television systems, (2) clarify the Rules to make clear the situations in which nonadjacent channels may be used for LDS station operation, (3) provide a 12.5 MHz channel assignment plan for FM and double-sideband AM systems of transmission, (4) specify new frequency tolerance provisions and (5) limit all stations in the CAR service that do not use frequency-division multiplexed/FM (FDM/FM) systems of transmission and have path lengths less than 10 miles to a 12.5 MHz authorized bandwidth. Items (1) and (2) above were initiated by a Theta-Com of California Petition for Rule Making RM-1936. Items (3) thru (5) were added *sua sponte* by the Commission because these matters were "timely both in terms of the potential for congestion being created by these intracity stations in major cities and in terms of the developing technology which it appears will make this bandwidth reduction both technically and economically feasible over the distances involved in typical intracity applications." *Id.* at 857.

2. By *Report and Order*, adopted June 13, 1973, 41 FCC 2d 464, the Commission adopted amendments to Sections 78.5, 78.18, 78.103, 78.111 and 78.115 of the Commissions Rules and Regulations. These amendments were essentially those published in the *Notice of Proposed Rule Making*. However, at the urging of Theta-Com and others, minor changes were made to provide a measure of flexibility by allowing authorization of variations to the Rules upon adequate showing on a case-by-case basis. See, e.g., Section 78.18(e) of the Rules.

3. Petitions for reconsideration were received from Microwave Associates and International Microwave Corporation, and opposition thereto by Theta-Com of California. We now address the issues raised.

OCCUPIED BANDWIDTH SPECIFICATION

4. Microwave Associates objects to the definition of "authorized Bandwidth" set forth in Section 78.5(h) of the Rules as well as the modulation limits set forth in Section 78.115(b). These provisions operate in concert with Section 78.18(i) of the Rules to effectively preclude the use of FM transmission using 12.5 MHz channels generally, or the use of FM transmission totally in system paths less than 10 miles in length.[1] Because FM transmission is the only means of providing a received signal which can be carried on another CAR link without material degradation, the net effect of the rules adopted in the *Report and Order* is to substantially limit the nature of urban cable system structures. Microwave Associates submits data from measurements it has performed and maintains that with an input baseband approximating an off-the-air television signal,[2] the signal emitted from standard FM transmission equipment has an occupied bandwidth substantially less than 12.5 MHz. It is suggested that if such a baseband is utilized by a licensee in a particular application, appropriate flexibility should exist in the Commission's Rules to allow the specification of occupied bandwidth as an alternative to necessary bandwidth—thereby allowing all the modes of operation otherwise excluded.

5. Theta-Com of California is concerned with the adequacy of the data submitted by Microwave Associates, as well as the potential effect of out-of-channel radiation on adjacent channel communication. These are valid concerns. However, techniques exist whereby these undesirable effects may be minimized. Therefore, we have added a new Section 78.104 to our rules to permit licensees to specify the use of the lesser of the occupied or necessary bandwidth as the authorized bandwidth under specific circumstances in which the licensee makes certain showings acceptable to the Commission. These showings must indicate that the proposed operation will not significantly increase the potential for interference to operation on adjacent channels. In addition such a showing will be required to establish that the transmitting equipment to be used is capable of operation within the emission limitation requirements of Section 78.103(b)(1) and will operate so that 99 percent of the total radiated power will be contained within the frequency limits of the assigned channel.

---

[1] Section 78.5(h) of the Rules provides that authorized bandwidth is: "The maximum bandwidth authorized to be used by a station as specified in the station license. This shall be the occupied bandwidth or the necessary bandwidth, *whichever is greater*." [emphasis added]

Because "necessary bandwidth" is calculated by a formula which is a worst-case approximation utilizing an input baseband which may never be used in specific application, "necessary bandwidth" invariably exceeds "occupied bandwidth" which is that portion of the spectrum occupied by 99% of the emitted energy. See Section 2.202 of the Rules. Changes necessary to effect a "necessary bandwidth" of 12.5 MHz would materially degrade the television signal.

Section 78.18(i) of the Rules provides that ordinarily "[a]ll stations [with transmission paths less than ten miles in length] shall employ no more than 12.5 MHz *authorized bandwidth* per channel . . ." [emphasis added]

[2] This is essentially a superposition of the (sin x)/x functions for periodic luminance and chrominance information with the addition of a FM aural subcarrier at 4.5 MHz. See, e.g., J. Fink, *Television Engineering Handbook* (1957) at 10–1; Part 73 of the Rules.

6. The Commission has repeatedly emphasized its desire to encourage innovation in the development of system structures consonant with conserving spectrum. This desire is not served by essentially precluding system configurations that may prove highly viable to urban LDS, using novel technical approaches to conserve spectrum. At this time, proceeding on this innovative course is appropriately conducted on a case-by-case basis involving a sufficient technical showing accompanying any application for authorization. In making a determination of sufficiency, the staff will be guided by the following standards: 1) the amount of signal distortion introduced by excluding higher-order sideband components must not be significant, 2) emissions outside the desired channel must not result in significant interference to adjacent channel transmissions, 3) the carrier frequency tolerance must not aggravate (1) and (2), above, and 4) techniques used must reasonably reflect state-of-the-art capabilities. Sections 78.5(h) and 78.115 of the Rules should be amended to allow this action.

CARRIER FREQUENCY TOLERANCE

7. International Microwave Corporation objects to the adoption of an inflexible carrier frequency tolerance. It asserts that if the input baseband is reduced to 6 MHz or less for double-sideband AM modulation, the more restrictive frequency tolerances adopted in the *Report and Order* bear no relationship to a valid technical concern and result in the substantially increased equipment costs. Theta-Com of California objects, asserting that any loosening of said tolerance "would defeat the Commission's stated purpose for achieving optimum spectrum utilization efficiency."

8. Theta-Com's concerns are well directed. However, the standard established by the Commission toward implementing its stated purpose at this time is a 12.5 MHz criterion *not* 6 MHz. If the Commission had determined that double-sideband AM transmission thwarted its spectrum conservation purpose, it could have eliminated this method of modulation. In light of the 12.5 MHz standard, if an individual applicant wished to impose restrictions on his input baseband such as to allow a greater carrier frequency tolerance without impacting its technical specifications, appropriate flexibility should exist in the Commission's Rules to implement the operation.

9. All interests are best served by providing fixed general guides, yet allowing the authorization of conditional modes of operation. On a case-by-case basis involving a sufficient technical showing accompanying any application for authorization, special tolerances may be specified. In making a determination of sufficiency, the following standards will govern: 1) the difference between the occupied bandwidth and the channel width must accommodate the desired tolerance without degradation of other technical specifications, and 2) techniques used must reasonably reflect state-of-the-art capabilities.

CONCLUSIONS

10. In light of the foregoing, we conclude the public interest would be served by the adoption of the rules set forth in the Appendix

hereto. Authority for the rules is contained in Sections 2, 3(a), 4(i), and (j), 301, 303, 307(b), 308, 309, 403 of the Communications Act of 1934, as amended.

Accordingly, IT IS ORDERED, That effective August 16, 1974, the modifications in Part 78 of the Commission's Rules and Regulations that are set out in Appendix A ARE ADOPTED.

IT IS FURTHER ORDERED, That the petitions for Reconsideration ARE DENIED in all other respects.

IT IS FURTHER ORDERED, That proceedings in Docket 19623 ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

APPENDIX A

Part 78 of Chapter I of Title 47 of the Code of Federal Regulations is amended in the following manner:

1. In Section 78.5, Paragraph (h) is amended to read as follows:

§ 78.5 Definitions.

* * * * * * *

(h) Authorized bandwidth. The maximum bandwidth authorized to be used by a station as specified in the station license. (See Sections 2.202 and 78.104.)

2. In Section 78.103, the headnote is revised to read as follows:

§ 78.103 Emissions and emission limitations.

* * * * * * *

3. A new Section 78.104 is added to read as follows:

§ 78.104 Authorized bandwidth and emission designator.

(a) The authorized bandwidth permitted to be used by a cable television relay station and specified in the station license shall be the occupied or necessary bandwidth, whichever is greater, except when otherwise authorized by the Commission in accordance with paragraph (b) of this section.

(b) As an exception to the provision of paragraph (a) above, the Commission may approve requests to base the authorized bandwidth for the station on the lesser of the occupied or necessary bandwidth where a persuasive showing is made that:

(1) Interference potential to operation on adjacent channels will not be significantly increased;

(2) The frequency stability of the transmitting equipment to be used will permit compliance with Section 78.103(b)(1) and, additionally, will permit 99 percent of the total radiated power to be kept within the frequency limits of the assigned channel.

(c) The emission designator shall be specified in terms of the necessary bandwidth. (See Section 2.201(a) of this chapter.)

4. In Section 78.111, the footnote at the end of the section is amended to read as follows:

§ 78.111 Frequency tolerance.

* * * * * * *

[1] This tolerance shall apply to stations authorized on or after July 1, 1974, and to equipment type-accepted on or after January 1, 1974. A frequency tolerance of 0.02 percent shall apply to all other equipment in this category. Except that upon suitable showing that the occupied bandwidth (Ref. § 2.202) is sufficiently less than the channel width desired, accompanying any application for authorization, special tolerances may be specified in said authorization.

5. In section 78.115, Paragraph (b) is amended to read as follows:

§ 78.115 Modulation limits.

* * * * * * *

(b) For stations that employ FM transmission, the total excursion of the radio frequency carrier under modulation and the maximum modulation frequency must be maintained so that the authorized bandwidth is not exceeded in operation.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
CAPT. PAUL A. JOHANSEN, DALLAS, TEX.
For Ruling as to Renewal and Inspection
Re Cargo Ship Radiotelephony

JULY 3, 1974.

CAPT. PAUL A. JOHANSEN,
Cumberland Hill, 1901 North Akard, Dallas, Tex. 75201.

DEAR CAPTAIN JOHANSEN: This responds to your letter of May 24, 1974, concerning renewal of the Cargo Ship Radiotelephony Certificate and the requirement of the Communications Act for an annual inspection by the Commission of the radiotelephone installation on the SEDCO 702.

As we have discussed informally with you by telephone, the radio station inspection and safety certificate procedures of the conference on Safety of Life at Sea (SOLAS) and the Communications Act, apply primarily to vessels that regularly navigate the seas and, therefore, ordinarily arrive in ports at least annually so that inspections can be made. There are no provisions that provide a procedure applicable specifically to vessels that remain away from a U.S. port, or any port, for longer periods, or indefinitely, as in the case of the high seas oil exploration and drilling in international waters by apparatus such as the SEDCO 702. Such operations seem to be relatively recent in origin and increasing, and it may be that appropriate modifications in the SOLAS agreement or the Communications Act should be considered to cope with these situations. We have this matter under study.

In the meantime, it appears the vessel operators will have no practicable alternative but to operate without the required safety certificates, until such time as the vessel navigates to a port or in waters of a foreign country where arrangements can be made for foreign inspection and issuance of a SOLAS Certificate, or to a U.S. port for American inspection and issuance of a SOLAS and a Communications Act certificate. When the SEDCO 702 arrives in Rotterdam, we suggest your officials contact the U.S. Consul there for advice relative to the correct inspection procedure for a new SOLAS Certificate.

Because of your inability, under existing inspection procedures and facilities, to obtain an inspection of the radio installation and issuance of appropriate safety certificates, the navigation of the vessel in the drilling area, or to a port, without valid safety certificates would not constitute violations for which enforcement sanctions would be imposed by the Commission. Navigations from a foreign port where an inspection and a SOLAS Certificate can be obtained, or from a U.S. port where an inspection and a SOLAS and a Communications Act certificate can be obtained, without these required certificates and inspections would be subject to the imposition of monetary forfeitures or other appropriate enforcement sanctions. We would expect, however, that all navigations of the vessel, or other such vessels under comparable circumstances, would be with efficient radio installations, as required by SOLAS, or Section 351 of the Communications Act and regulations promulgated by the Commission pursuant thereto.

We trust this information will be helpful to you. If you have further questions on this matter, please feel free to contact us.

Sincerely yours,

CHARLES A. HIGGINBOTHAM,
Chief, Safety and Special Radio Services Bureau.

FCC 74-693

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of

LACKAWANNA CABLEVISION, INC., LACKAWANNA, N.Y.	CAC-129 NY317
BLASDELL CABLEVISION, INC., BLASDELL, N.Y.	CAC-130 NY318
CHEEKTOWAGA CABLEVISION, INC., CHEEKTOWAGA, N.Y.	CAC-131 NY319
HAMBURG CABLEVISION, INC., HAMBURG, N.Y.	CAC-132 NY321
WEST SENECA CABLEVISION, INC., WEST SENECA, N.Y.	CAC-133 NY320
CHEEKTOWAGA CABLEVISION, INC., SLOAN, N.Y.	CAC-134 NY351

For Certificates of Compliance

MEMORANDUM OPINION AND ORDER

(Adopted June 26, 1974; Released July 9, 1974)

BY THE COMMISSION: COMMISSIONERS WILEY, CHAIRMAN; AND REID CONCURRING IN THE RESULT.

1. Lackawanna Cablevision, Inc., Blasdell Cablevision, Inc., Cheektowaga Cablevision, Inc., Hamburg Cablevision, Inc., and West Seneca Cablevision, Inc.,[1] operate cable television systems at the above-captioned Buffalo, New York, suburbs. All systems operate from a single headend located at Lackawanna, New York, all are in the Buffalo television market (# 24), and provide the following television signals to their subscribers:[2]

WKBW-TV (ABC, Channel 7) Buffalo, New York
WBEN-TV (CBS, Channel 4) Buffalo, New York
WGR-TV (NBC, Channel 2) Buffalo, New York
WNED-TV (Educ., Channel 17) Buffalo, New York
WUTV (Ind., Channel 29) Buffalo, New York

---

[1] All are associated subsidiaries of Comax Telecom Corporation.

[2] System data as of December 12, 1972:

Community of system	Community population	Number of subscribers
Blasdell	3,910	432
Cheektowaga	94,342	2,594
Hamburg	33,519	715
Lackawanna	28,657	2,725
Sloan	5,216	497
West Seneca	48,391	1,748
Totals	214,035	8,711

CBLT (Ind., Channel 5) Toronto, Canada
CFTO–TV (Ind., Channel 9) Toronto, Canada

The applicants request certification for the carriage of the following signals:

CBLT (Ind., Channel 5) Toronto, Canada
CFTO–TV (Ind., Channel 9) Toronto, Canada

Carriage of these signals is consistent with Section 76.61 of the Commission's Rules.

2. A "Joint Objection and Request for Special Relief Ruling" was filed by WBEN, Inc., licensee of Station WBEN–TV, Buffalo, New York, Capital Cities Broadcasting Corporation, licensee of Station WKBW–TV, Buffalo, New York, and Taft Broadcasting Company, licensee of Station WGR–TV, Buffalo, New York. They seek special relief that would require the full time carriage of the requested signals and would forbid the use of the discretionary local program substitution provisions of Section 76.61(b)(2)(ii) on the subject systems' carriage of the Canadian signals.[3] In support of their request, the broadcasters argue: (a) that the applicants have been operating their systems without appropriate authorization and because of this past history of disregard for Commission Rules, the applicants cannot be trusted to properly utilize the local program substitution provision: [4] (b) that the Canadian signals are, in reality, signals that are significantly viewed by the systems' subscribers, and, therefore, Section 76.61 (b)(2)(ii) is not available to the applicants; (c) that there is such a strong community of interest between the local residents and those of Toronto that the Canadian signals should be carried in their entirety; and, (d) that if the Commission were to adopt measures designed to enhance the carriage of Canadian programming on U.S. cable systems, then Canada might feel inclined to reciprocate.[5]

3. The applicants' predecessor in interest, Community Television Antenna Systems, began service to three separate trailer parks in the City of Lackawanna in the early summer of 1965. On August 9, 1968, the applicant filed a Section 74.1105 notice for the carriage of WBAU,[6] WBEN–TV, WGR–TV, WKBW–TV, WNED–TV, WTVF,[7] and a station under construction on its Blasdell, Hamburg, and Lackawanna systems. On September 24, 1968, an additional Section 74.1105 notice for carriage of Canadian television stations CBLT, CFTO–TV, and CHCH–TV, was filed for the same systems. On October 24, 1968, WBEN, Inc., and Taft Broadcasting Company filed Sec-

---

[3] Section 76.61(b)(2)(ii) provides as follows: Whenever, pursuant to Subpart F of this part, a cable television system is required to delete a television program on a signal carried pursuant to paragraph (b)(2)((i) or (c) of this section, or a program on such a signal is primarily of local interest to the distant community (e.g., a local news or public affairs program), such system may, consistent with the program exclusivity rules of Subpart F of this part, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the cable system need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

[4] The stations argue that the cable systems will use this provision to import distant independent signals that would otherwise not be available.

[5] The broadcasters additionally state that the applicants' access proposals are technically unworkable. However, the applicants amended their proposals to obviate the problem and we are satisfied that the access proposals are feasible and in compliance with our Rules.

[6] This station occupied Channel 49, Buffalo, New York, and was deleted from Commission records on November 24, 1970.

[7] This station occupied Channel 23, Buffalo, New York, and was deleted from Commission records on February 16, 1972.

tion 74.1109 petitions for special relief, which invoked the Section 74.1105(c) mandatory stay provisions against the carriage of the Canadian signals. On November 7, 1968, Ultravision Broadcasting Company filed a Section 74.1109 petition directed against these signals.[8] Prior to March 31, 1972, the system was expanded to serve Cheektowaga, Sloan, and West Seneca, New York. However, no Section 74.1105 notice was ever filed for these communities. All the communities are provided with the same signals. On April 5, 1972, the subject applications were filed asking for authorization for the addition of CBLT and CFTO–TV. Both signals have been carried on the systems since before March 31, 1972.

4. It is clear that most of the service provided by these cable television systems was never authorized. However, we note that the carriage of all of these signals upon the subject systems is now fully consistent with the Commission's Rules and that the objecting stations do not challenge this consistency. Instead, they seek limitation of the use of Section 76.61(b)(2)(ii) as a penalty for illegal conduct on the part of the applicants. Since there is no suggestion that the applicants have ever abused Section 76.61 (b)(2)(ii), it appears that we are being asked to eliminate program substitution for these communities solely because of the applicant's violation of other parts of our Rules. We do not believe this to be a just penalty. Moreover, we find no support for the stations' claim of significant viewing of the Canadian signals at the communities served. It is not supported by either Appendix B of the *Reconsideration of the Cable Television Report and Order* or by a survey pursuant to Section 76.54 of the Rules. Nor is the stations' argument that a compelling community of interest requires full carriage of the Canadian signals either substantiated or relevant. Finally, it is also irrelevant and inappropriate for this Commission to deny the applicants their rights here on the mere possibility that it would somehow enhance United States-Canadian relations.

5. Although there have been serious violations of past Commission Rules, the public interest does not require the disruption of established viewer habits by the applicants' discontinuance of presently consistent service to their subscribers. On the other hand, we feel that because of the applicants' past violations, a close check on the cable systems is required, particularly with respect to program substitution. Consequently, we will ask that each of the applicants provide the Commission with a monthly diary of their use of the program substitution provisions of Section 76.61(b)(2)(ii) for one year following the release date of this document. The diary must be signed by the applicant, and submitted within 30 days of the close of the preceding month. It should be in the form of a program log that will give the Commission a detailed showing of: (a) any program dropped; (b) the program inserted in its place; (c) the respective broadcast stations involved; (d) the duration of the substitution; and, (e) the time and date of the substitution. We emphasize that we will continue to scrutinize carefully the applicant's operation for an indefinite period

---

[8] Since the stations no longer oppose carriage of these signals, the three petitions will be dismissed as moot.

and any future violations of our rules will be met with appropriate action.

6. The applicants also ask that we approve their proposal to serve the conglomerate system with only one set of access facilities. They state that the systems serving the six communities are technically integrated into a single operating unit with one headend. They further state that the conglomerate's headend and studio facility is central and convenient to all communities, the farthest point being only about twelve and one-half miles from the studio. Moreover, they state that because of the existing freeways in the area, the most distant citizen of any of the communities is no more than 20 minutes from the studio. They argue that because of the close proximity of each community and because of the continuity of interests and integrity of engineering of the entire system, they should be afforded some relief from the requirements of Section 76.251. We are not unmindful of the problems that these existing conglomerate systems face regarding full compliance with Section 76.251. *See* Para. 90, *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 359 (1972). The availability of the required access channels for the total population involved in the proposal brings the systems' proposal within the scope of prior Commission precedents and we will therefore grant the requested waiver until March 31, 1977. *See, e.g., People's Cable Corp.*, 45 FCC 2d 367 (1974), and *Gerity Broadcasting Co.*, 36 FCC 2d 69 (1972).

In view of the foregoing, the Commission finds that a grant of the subject applications and a partial waiver of Section 76.251 would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the petition for special relief (SR-106813), filed on October 24, 1968, by WBEN, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, That the petition for special relief (SR-106817) filed on October 24, 1968, by Taft Broadcasting Company, IS DISMISSED.

IT IS FURTHER ORDERED, That the petition for special relief (SR-116813), filed on November 7, 1968, by Ultravision Broadcasting Company, IS DISMISSED.

IT IS FURTHER ORDERED, That the "Joint Objection and Request for Special Relief Ruling" filed on August 10, 1972, by WBEN, Inc., Capital Cities Broadcasting Corporation, and Taft Broadcasting Company, IS DENIED.

IT IS FURTHER ORDERED, That the applications for certificates of compliance (CAC-129 through 134), filed April 5, 1972, by associated subsidiaries of Comax Telecom Corporation, ARE GRANTED, subject to the applicants' compliance with the condition imposed in paragraph 5 above, and the appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-703

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF RULES PART 15, SUBPART E— LOW POWER COMMUNICATION DEVICES	Docket 17364 RM 449 RM 463

ORDER

(Proceeding Terminated)

(Adopted July 2, 1974; Released July 8, 1974)

BY THE COMMISSION:

1. On April 12, 1967 the Commission adopted a Notice of Proposed Rule Making in the subject proceeding (32 F.R. 6145). This proceeding proposed to delete the band 26.97–27.27 MHz from Subpart E of Part 15 and to substitute therefor the band 49.9–50.0 MHz. Comments were received from a number of parties, nearly all of which objected to this proposed change. In view of these objections, and our inability to resolve these differences, the proceeding was held in abeyance.

2. The critical situation that has since developed in the Citizens Radio Service with respect to class D stations which use essentially the same frequencies used by the Part 15 low power communication devices (walkie talkies) may make it necessary to reactivate this proposal. However, the information in this proceeding is out of date both due to developments in technology as well as in operating practice.

3. It is accordingly ordered that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-697

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of NATIONAL BROADCASTING CO., INC. For Renewal of Licenses for Stations KNBR and KNBR-FM, San Francisco, Calif.	File Nos. BR-42, BRH-624

MEMORANDUM OPINION AND ORDER

(Adopted June 26, 1974; Released July 5, 1974)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT.

1. The Commission has before it for consideration: (i) the above-captioned license renewal applications for Stations KNBR-AM and FM, San Francisco, California timely filed by the National Broadcasting Company, Inc. (KNBR); (ii) a "Petition to Deny and to Intervene" the above applications, filed on November 1, 1971, by Marcus Garvey Wilcher, individually and in a representative capacity for the Community Coalition for Media Change, Jimmie Ong, individually and in a representative capacity for the Bay Area Chapter of the Japanese-American Citizens League and the Oakland Chinese Community Council, and Ray Rivera, individually and in a representative capacity for the Mission Media Art (petitioners); (iii) KNBR's response to the petition to deny, filed November 23, 1971; and (iv) the petitioners' reply to the opposition, filed December 23, 1971.

2. Petitioners raise various questions concerning KNBR's employment policies and practices, past programming, ascertainment of community problems, and proposed programming.[1] These questions will be treated seriatim.

EMPLOYMENT

3. Petitioners maintain that KNBR has failed to comply with the Commission's equal employment opportunity requirements as set forth in Sections 73.125 and 73.301 of our Rules. The approach taken by petitioners in support of this contention is based on statistical inferences, its position being that KNBR employs a non-proportionate number of minorities and that those minorities who are employed occupy the lower paying positions. In reply, the licensee maintains that it is an equal opportunity employer and, in this respect, outlines the various steps it has undertaken to train and attract minority personnel.

---

[1] Although the petition is directed against both KNBR and KNBR-FM, the allegation against each are essentially the same. Therefore, both stations will be referred to as KNBR.

4. It is well established that the Commission has

> * * * at no time indicated that "fully proportional" employment of minority groups is called for by our rules, since we do not believe that fair employment practices will necessarily result in the employment of any minority group in direct proportion to its numbers in the community. *Report and Order, Docket No. 18244*, 23 FCC 2d 430 (1970).

5. In accord with this position, the Commission has consistently maintained that non-proportionate minority group employment at a station, standing alone, does not necessarily present an issue warranting exploration in an evidentiary hearing. See, e.g., *The Evening News Association*, 35 FCC 2d 366 (1972). The courts have also recognized that non-proportionate minority group employment at a station does not necessarily evidence discrimination requiring an evidentiary hearing. See, e.g., *Stone* v. *Federal Communications Commission*, 466 F. 2d 316, *rehearing denied*, 466 F. 2d 331 (1972); *Avco Broadcasting Corporation*, 39 FCC 2d 4 (1972), *affirmed sub nom., The Bilingual Bicultural Coalition of Mass Media, Inc.* v. *Federal Communications Commission*, D.C. Cir., Case No. 72–2205 (February 13, 1974); and *The Outlet Company*, 38 FCC 2d 355 (1972), *affirmed sub nom., The Bilingual Bicultural Coalition of Mass Media, Inc.* v. *Federal Communications Commission*, D.C. Cir., Case No. 73–1001 (February 22, 1974). We realize, as petitioners apparently argue, that statistics can raise appropriate questions requiring administrative action and, accordingly, the Commission has proceeded on this basis in a number of cases. See, e.g., *Inquiry Into the Employment Policies and Practices of Certain Broadcast Stations Located in Florida*, FCC 74–18 (January 10, 1974).[2] However, the facts presented in this matter plainly demonstrate that KNBR has followed practices designed to improve the employment status of minorities.

6. In the renewal application KNBR proposed to increase its minority employment by at least two minority employees in the next year through replacement of employees leaving the station. It stated that it particularly recognized the desirability of additional minority employees in the manager category. KNBR's equal employment opportunity program includes several steps to assure nondiscrimination in recruiting, hiring, placement and promotion, and compensation. In addition to such measures as notices posted at the station and letters advising employment sources of the station's equal employment opportunity policy, KNBR has a community relations manager who, among other things maintains contact with minority organizations with an eye to employment referrals. Also, during the preceding two summers KNBR had trained two minority youths obtained through neighborhood youth councils in office skills. It proposed to continue the program. The corporate licensee, NBC, has a tuition refund program for employees. Employees, particularly minority employees, are assisted in selecting study programs to improve their effectiveness and prepare them for increased responsibilities by study in degree programs as well as work related subjects

---

[2] It is also noteworthy that the Commission's Industry Equal Employment Opportunity Unit is currently reviewing our equal employment opportunity policies and procedures to determine whether new or revised guidelines should be issued to further effectuate the goals of equal opportunity in employment for minorities and women. See *Avco Broadcasting Corporation, supra.*

such as typing, shorthand, and technical repair. KNBR also supports with money and personnel the local Broadcast Skills Bank, a central clearing house for placement of minorities in jobs in the San Francisco area. In 1968 KNBR developed the Bay Area Directory of Job Placement Services for Minorities and offered it free of charge to employers and job applicants. The directory was updated twice between 1968 and 1971, and KNBR states that over 15,000 copies have been sent to those requesting it.

7. As indicated above, an extremely low rate of minority employment at a broadcast station may constitute a *prima facie* indication of employment discrimination requiring appropriate administrative action. According to 1970 U.S. Census Data, San Francisco, California has a population of 715,674 persons, of which 306,389, or 42.8 percent, are minorities (i.e., Blacks, Indians, Spanish-surnamed Americans, Japanese, Chinese, Philippinos, and others). The population of the San Francisco-Oakland Standard Metropolitan Statistical Area (SMSA) is 3,109,519 persons, of which 870,683, or 28.0 percent are minorities. The record shows that the minority employment profile at the KNBR stations ranged from 10.9% in 1971 to 23.5% in 1973 and included minorities in higher paying jobs in each year. Thus, in 1971 the KNBR stations employed 55 persons fulltime, including 1 Oriental and 1 Spanish-Surnamed American technician, 1 Spanish-Surnamed American salesworker, and 2 Blacks and 1 Oriental in the office and clerical category. In 1972, the KNBR stations employed 52 persons fulltime, including 2 Blacks, 1 Oriental and 2 Spanish-Surnamed Americans in the higher paying positions and 1 Black, 1 Oriental and 2 Spanish-Surnamed Americans in the lower paying job categories. In 1973, the KNBR stations employed 51 persons fulltime, including 1 Black professional, 2 Blacks, 1 Oriental and 1 Spanish-Surnamed American in the technician category, 1 American Indian salesworker, and 3 Blacks and 3 Orientals in the office and clerical category. Accordingly, the minority employment at the KNBR stations falls within a zone of reasonableness and when considered in conjunction with the licensee's efforts to improve the employment status of minorities, we conclude that further administrative inquiry is unwarranted. See *Avco Broadcasting Corporation*, 39 FCC 2d 4 (1972), *affirmed sub nom., The Bilingual Bicultural Coalition of Mass Media, Inc.* v. *Federal Communications Commission*, D.C. Cir., Case No. 72-2205 (February 13, 1974).

PAST PROGRAMMING

8. Petitioners raise several questions relating to the adequacy of KNBR's past non-entertainment programming (i.e., News, Public Affairs, and All Other programs, exclusive of Entertainment and Sports). It is alleged, for instance, that a serious question is raised because almost all of KNBR's "public affairs" and "all other" programming is broadcast on Sunday. The principal non-entertainment programming vehicles of the KNBR stations are set forth in Exhibit IV-A-3 of the renewal applications, attached hereto as Appendix A. The briefest perusal of the applications reveals that several of these programs have dealt with local community problems, needs and in-

terests. Briefly, for example, *Rap Session* has dealt with problems such as unemployment, education, preservation of open space, drugs, methadone, crime, how to increase the number of Spanish-surnamed persons in the civil service, minority employment, medical care for low income neighborhoods, and self help for the elderly. Topics on *KNBR Youth Forum* have included various problems relating to education, what parents should know about drugs, racial discrimination and its effect on youth, how the schools can provide the best education for minority youth, and on being Chinese in America, and topics on *Men of Action* have included education, ecology, community control of the police, legal aid, and consumer frauds. Likewise, topics on *Faith Forum* have included the work of the NAACP, religion and peace, and minority hiring and housing.

9. As to the scheduling of KNBR's non-entertainment programs, the record shows that *Faith Forum* was broadcast at 9:05 a.m. on Sunday and that the other three programs (*Rap Session*, *KNBR Youth Forum* and *Men of Action*) were broadcast on Sunday evenings. The record also shows that the stations carried the NBC network programs *Meet the Press* and *Second Sunday* on Sunday evenings. Further, during the rest of the week, the KNBR stations broadcast *Sacramento Focus*, a one minute program presented twice a week discussing state legislation. Additionally, and on a regular basis, the KNBR stations broadcast the NBC weekend *Monitor* program, which contains public affairs segments, and *Emphasis*, four minute programs broadcast several times a day on weekdays. Topics covered by *Emphasis* have included pollution, the war in Indochina, drugs, pesticides, education, urban congestion, the nomination of Judge Haynesworth to the Supreme Court, and the Philadelphia Plan for equal employment opportunity. Finally, the applications and pleadings show that KNBR presents network news every hour on the hour from 6:00 a.m. to 10:00 p.m. and local news at 20 and 40 minutes past the hour every hour from 6:00 a.m. to 10:00 p.m. as well as at 11:00 p.m. Also, KNBR has broadcast a variety of public service announcements at various times, including during community hours, some of which have related to minority needs.

10. It is plain that the KNBR stations have presented a broad spectrum of non-entertainment programming appropriately responsive to community problems, needs and interests. The mere fact that the licensee has presented *most* of this programming on Sunday, including Sunday evening, rather than on some other day, does not establish that a grant of the renewal applications would be prima facie inconsistent with the public interest. It is entirely possible that the stations have not broadcast such programming on the days—or at the times—preferred by petitioners. Licensees, however, must make good faith judgments in determining how and to what extent to deal with community problems, needs and interests.

See *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 679, 687 (1971). While petitioners may disagree with the licensee's judgment, as we have previously stated questions will not be raised about program scheduling decisions absent a specific showing that the licensee could not reasonably expect that the broadcast would be effective. *RadiOhio, Inc.*, 38 FCC 2d 721

(1971). We also note that the Commission has not attempted to dictate to broadcasters the types, formats and time periods during which non-entertainment programming should be carried; that, nevertheless, licensees do have an obligation to present some non-entertainment programming in prime time when a large audience is available; but, that

> * * * licensees have discretion to schedule this type of programming in other hours when it may face less competition from the more broad-appeal entertainment programming available during [prime time]. Hence, the Commission has consistently called upon broadcasters to exercise their prudent judgment in determining the problems of the communities they are licensed to serve, and the amount, kind and time-periods during which nonentertainment programming should be presented to provide for those problems. (*Time-Life Broadcast, Inc.*, 33 FCC 2d 1081, 1092 (1972)).

On the basis of the record, we find that the licensee has attempted to meet community problems with various types of programming which has been broadcast at different times and days throughout the week. Absent persuasive evidence to indicate that these efforts were necessarily ineffective, the Commission will not substitute its judgment for that of the licensee. We have, of course, never insisted that only locally produced programs can meet community problems. *Renewal of Broadcast Licenses*, 44 FCC 2d 405, 422 (1973). Accordingly, in view of KNBR's scheduling of various kinds of non-entertainment programming at various times during the week, petitioners have not raised an issue here. It is also noteworthy that the Commission approved the licensee's 1968 program proposals, including its Sunday scheduling, in *National Broadcasting Co.*, 16 FCC 2d 698 (1969).

11. Petitioners' other criticisms involving the programming operations of the KNBR stations are either similarly unfounded or of such a minor nature as to be immaterial to a decision herein. It is alleged, for instance, that a serious question is raised as to the adequacy of the licensee's News performance because the KNBR stations presented more News during the 1965–68 license term than during the 1968–71 license term.[3] However, the amount of News programming actually broadcast by the KNBR stations during the 1968–71 license term exceeds the amount proposed in each station's last renewal application and on its face is a substantial and fully adequate quantity of News program time. Also, as with the other non-entertainment programming presented by the KNBR stations, the licensee's 1968 News proposals were specifically approved by the Commission in *National Broadcasting Co., supra.*

---

[3] Section IV–A of the 1968 and 1971 applications for renewal of licenses for the KNBR stations show the following:

		1968 composite week	1968 proposals	1971 composite week
KNBR (News)	hours	26:28	22:00	23:23
KNBR-FM (News)	hours	10:47	10:00	12:35

12. Petitioners also criticize both the scheduling and beneficiaries of the licensee's public service announcements. The complaint is that,

> * * * close scrutiny of KNBR's public service announcements during the composite week reveals some interesting facts. First, all of the prime time [e.g., 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m.] PSA's that were broadcast during the composite week were for the Chamber of Commerce, the Air Force, The Heart Society, and other governmental and charitable organizations. Besides "Jobs for Minorities", no other PSA aired in prime time during the composite week dealt with minorities, local problems ascertained by the station, or with particular organizations or issues reflecting broadly based, primarily local, interests and concerns. * * *

13. In reply, KNBR states that, as set forth in the application, during the license period it had carried PSA's dealing with such matters as voter qualifications, summer jobs for youth, drugs, minority employment, free legal services for minority businessmen, census count for Spanish speaking citizens, aids for minority applicants for police jobs, and tutorial programs for Chinese immigrants as well as many other subjects of general and minority interest. It states that some of the PSA's dealing with minority needs were carried during prime time but that no particular effort was made to schedule any particular type of announcement at any particular time.

14. Preliminarily, it should be noted that as in all other programming areas, a licensee is afforded wide discretion with respect to its choice of public service announcements. *The Evening Star Broadcasting Co.*, 27 FCC 2d 316, 333 (1971), *aff'd sub nom., Stone* v. *Federal Communications Commission, supra.* Again, petitioners have presented no specific facts that the licensee has abused that discretion. To the contrary, the renewal applications show that the KNBR stations have aired numerous public service announcements which are of interest to residents of the licensee's service area, and that it has also aired public service announcements more specifically directed to minorities. Accordingly, it is plain that the licensee's public service announcements have been responsive to the vast number of competing interests—economic, social, political, racial, ethnic, religious and others—all of which *may* deserve attention by the broadcast media. In this respect, petitioners have not alleged, much less shown, that the licensee has followed a policy of exclusion in airing public service announcements. *Time-Life Broadcast, Inc.*, 33 FCC 2d 1081, 1095 (1972). Further, since broadcast time for the various types of programming is limited, this licensee, as all licensees, must make good faith judgment in determining for whom, how many, and at what times it should broadcast public service announcements. Petitioners have not shown that the licensee here has abused its broad discretion in this respect and, once more, no issue has been raised.

15. In conjunction with the above, petitioners further allege that the licensee has improperly logged a spot announcement as a public service announcement. Petitioners stated that the composite week logs show that the spot announcement "Traffic Safety Tips", which was logged as a PSA, was followed in every instance by a commercial advertisement for the Anderson Company, a manufacturer of windshield wipers and other automobile accessories. Based on this it charged that "Traffic Safety Tips" was actually a commercial lead in

and should have been logged as commercial matter. KNBR stated that while it had deliberately scheduled the PSA next to the automobile related advertisement to emphasize the importance of the traffic safety tips and to place them within a relevant framework, the announcements were prepared and furnished free by the California Highway Patrol and the National Safety Council. It attached letters from the two organizations in support of this and a copy of an invoice for the Anderson Company, charging it for 10 seconds, the length of the Anderson commercial, and not for 30 seconds which would include the 20 seconds length of the Traffic Safety Tips announcement.

16. Licensees are called upon to make thousands of program scheduling judgments and petitioners' above-noted objection boils down to a mere difference of opinion regarding the manner of presentation of the announcements back-to-back. While the juxtaposition of the Traffic Safety Tip public service announcements may have been confusing or, indeed, in the opinion of some, not the most prudent judgment, this incident does not bear adversely on the licensee's qualifications.

ASCERTAINMENT

17. Petitioners allege generally that KNBR's survey of community problems is unsatisfactory because it resulted in KNBR's proposing insufficient programming for community problems. They specifically fault the survey on the ground that almost all of the applicant's community contacts were white males and allege that KNBR has failed to maintain a continuous dialogue with all segments of the community during the license term. They also say that there is no evidence to indicate that KNBR has satisfied its obligation to ferret out the significant groups within the community which because of their race, level of education, or cultural deprivations are disenfranchised and otherwise unseen.

18. In opposition, the licensee describes an elaborate ascertainment process, both throughout the license term and specifically in conjunction with preparing its renewal applications. According to the licensee, for instance, during the license term management level personnel of the stations conducted interviews with many varied community leaders, and conducted in person, by telephone, and/or questionnaire surveys of the general public. Also, in connection with selecting topics for editorials, in May 1971 the licensee states that it surveyed about 150 local elected representatives and others with a questionnaire asking them to rank 14 problem areas for the Bay area which it had determined by its other ascertainment methods. Additionally, the licensee maintains that station personnel met with community groups and leaders on various occasions throughout the license period, that it reviews ethnic publications, analyzes listener mail and telephone calls, and that station personnel hold membership in various local organizations, all of which contribute to its continuous ascertainment process. In connection with preparing its renewal applications the licensee notes that management level personnel of KNBR interviewed about 500 community leaders, including 61 Blacks, 28 Spanish surnamed persons, 17 Chinese, 6 Filipinos, 7 American Indians, and 4 Japanese, and that more than 150 of the interviews were with leaders

of groups or organizations specifically concerned with problems relating to the minority communities. The licensee also notes that it hired a professional research organization to conduct a general public survey. The survey comprised 500 telephone interviews, augmented by 100 extra interviews among minority groups and a supplemental survey of 150 teenagers.

19. The fact that most of KNBR's community contacts were white males does not invalidate the ascertainment. The Commission has previously rejected the contention that only Blacks can interview and understand Blacks, etc. *Storer Broadcasting Co.*, 41 FCC 2d 790 (1973). With reference to the charge that KNBR has failed to ferret out significant groups, a general allegation is not sufficient to raise a question about the adequacy of the ascertainment. As the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971) makes clear, a challenge must do more than merely state that a significant group has been omitted but must show that a particular significant group has been omitted by means of supporting data. *Primer*, 663.

20. Petitioners have made no other specific allegations concerning the ascertainment, and since the surveys of community leaders and of the general public comport with the requirements of the *Primer*, a general allegation that the ascertainment of community needs is unsatisfactory does not raise any substantial or material question of fact requiring a hearing.

PROPOSED PROGRAMMING

21. Petitioners also maintain that the licensee proposes "* * * no meaningful service to the public." According to petitioners, this is evidenced by the fact that the licensee plans to devote less air time to News, All other programs, exclusive of Entertainment and Sports, and Public Service Announcements than its actual performance during the composite weeks for the 1965–68 or 1968–71 license periods, or both. Petitioners also maintain that this conclusion is warranted since the licensee proposes to reduce its News and All other programming commitments for the 1971–74 license period and plans on continuing to schedule most of its non-entertainment programming on Sunday.

22. The Communications Act requires that as a prerequisite to the grant of an application for renewal of a broadcast license, the Commission must find that the station will be operated to serve the public interest. The Commission has stated that the principal ingredient of the licensee's obligation to operate in the public interest is the diligent, positive and continuing effort to discover and fulfill the tastes, needs and desires of its community. *Report and Statement of Policy re: Commission En Banc Programming Inquiry*, 25 Fed. Reg. 7291, 7294 (1960). To determine whether the licensee has met this obligation, the Commission designed Section IV–A, Part I of FCC Form 303, the license renewal application, to require the licensee to state the methods used to ascertain community problems, those problems ascertained, those problems which the station plans to treat during the upcoming license term, and typical and illustrative programming the station

plans on broadcasting to meet those problems. Additionally, the Commission requires the licensee to state the amount of air time it proposes to devote normally each week to News, Public Affairs, All other programs, exclusive of Entertainment and Sports, and Public Service Announcements. FCC Form 303, Part III, Questions 12 & 16.

23. When considering a licensee's program proposals it should be kept in mind that it is the licensee who must determine what percentage of the limited broadcast day should be appropriately devoted to non-entertainment programming, rather than to the other legitimate services of radio broadcasting.[4] Thus, a licensee is accorded wide discretion in its choice of programming to meet the needs of its service area. In exercising this discretion, the licensee may take into consideration various factors, including the particular format of the station, the composition of the audience, and the programming offered by other stations in the area. *Primer, supra*, at 673.

24. While it is the licensee who has the responsibility to determine the amounts, kinds and time-periods during which non-entertainment programming should be broadcast, the Commission also has the responsibility of assuring that the station will be operated in the public interest. The Commission will, therefore, consider licensee responsibility in this difficult area on a case-to-case basis and call upon broadcasters to submit proof of their efforts and performance when the public interest so requires. The Commission will act, however, only where a substantial and material question of fact is raised about the reasonableness or good faith of the licensee's judgment. We will not, for instance, base a grant or denial of a renewal application upon a subjective determination of what is or is not a good program. Nor will we act on a general assertion that the licensee's proposals are inadequate. The allegation of ultimate, conclusory facts or mere general allegations on information and belief are insufficient to require administrative action. Rather, our determination—as the public's—must be based on an analysis of the responsiveness of the licensee's overall programming, past and proposed, to community problems, needs and interests. Therefore, under the circumstances presented here, petitioners must make specific allegations of fact which, if true, would establish that the licensee's overall program proposals could not reasonably meet the problems, needs and interests of its service area.

25. We have been presented with no information which establishes that the licensee's overall program proposals will fail to reasonably meet the problems, needs and interests of its service area. As indicated above, a review of the renewal applications for the KNBR stations discloses that the licensee has fully complied with the Commission's ascertainment requirements. Briefly stated, the licensee has consulted with a representative cross-section of community leaders and has had a professional survey conducted of the general public to ascertain community problems. In this latter respect, it has listed those problems ascertained and has proposed programming designed to deal with a

---

[4] A comparison of the licensee's 1968 program proposals, 1971 composite week performance, and 1971 program proposals are set forth in Appendix B.

number of those problems. Thus, for example, the licensee proposes to continue the programs *Rap Session*, *KNBR Youth Forum*, *Men of Action* and *Faith Forum*. It is clear from our brief discussion of these programs, *supra*, that they are designed to deal with community problems. On the basis of this information, we believe that the licensee has proposed appropriate programs responsive to community problems it ascertained and, in this regard, petitioners offer no specific evidence which calls the licensee program proposals into question.

26. Indeed, the only specific criticism of the licensee's program proposals (except for the allegation discussed *infra*) is quantitative. The Commission has not adopted quantitative standards by which to judge a licensee's programming, past or proposed. Rather, as indicated above, the amount of programming to be devoted to meet community problems is left to the licensee's discretion. *Mahoning Valley Broadcasting Corporation*, 39 FCC 2d 52, 61 (1972). The record indicates that the licensee has proposed significant amounts of News, Public Affairs, and All other programs, exclusive of Entertainment and Sports, as well as Public Service Announcements, to serve the needs of its service area. Petitioners have presented no facts to demonstrate that these proposals are inadequate. The fact that the stations propose less News and All other programming than they actually carried during past license terms indicates no decline in service to the public. "It must be kept in mind that future proposals state a minimum of service that will be provided. If the Commission were to require broadcasters to base future proposals on actual performance which exceeded previous proposals, such a policy could well serve to discourage licensees from exceeding their proposals." *Time-Life Broadcast, Inc.*, 33 FCC 2d 1065, 1078 (1972). Indeed, comparing actual performance with future proposals involves an apples-to-oranges comparison. Proposals should be compared to actual performance and when this is done it is plain that there is no substantial promise versus performance question presented in this matter.

27. Similarly, the mere disagreement with the licensee's determination to eliminate its newscasts between midnight and 6:00 a.m. does not require further administrative inquiry. The record shows that this proposal was made on the grounds that there is little national news provided by the wire services and practically no local news provided during this time period. Other than the general assertion that the licensee's proposal is not in the public interest, petitioners have not shown any reasonable basis for concluding that the licensee's news proposals are inadequate or which calls into question the licensee's good faith judgment. More importantly, perhaps, petitioners have failed to show that the licensee's overall programming proposals are inadequate. Further, as we concluded in our discussion of the licensee's past programming, *supra*, we do not believe that the scheduling of the licensee's non-entertainment programming contravenes the public interest. Absent persuasive evidence to indicate that these efforts will be ineffective, the Commission will not substitute its judgment for that of the licensee.

28. In addition to the above, petitioners charge the licensee with misrepresentation, stating that Pro and Con, a program proposed by the licensee, would not in fact be broadcast as set forth in the applications. The licensee's explanation, as supplemented by letters from the League of Women Voters, refutes this charge. In short, such a program was planned but, according to the licensee and League officials, plans were discontinued after the filing of the renewal application because the League had informed the licensee that it could not produce such a program on a regular basis. Hence, no cause for further Commission action has been demonstrated.

CONCLUSION

29. Section 309(d)(2) of the Communications Act provides that a renewal application shall be granted where the Commission finds, after full consideration of all pleadings submitted, that there "are no substantial and material questions of fact and that a grant of the application would be consistent with [the public interest]." Where a petition to deny is filed, specific allegations of fact must be made which show that a grant of the application would be prima facie inconsistent with the public interest. Based upon our review of the above-captioned applications in conjunction with the pleadings filed in this proceeding, which have been briefly summarized herein, we find that petitioners have failed to raise a substantial and material question of fact which shows that a grant of the applications would be prima facie inconsistent with the public interest. We also find that the licensee, National Broadcasting Company, Inc., is legally, technically, financially and otherwise qualified to remain a licensee and that a grant of the above-captioned applications for renewal of licenses for Stations KNBR-AM-FM would serve the public interest, convenience and necessity.

30. Accordingly, IT IS ORDERED, That the Petition to deny and Intervene, filed November 1, 1971, by Marcus Garvey Wilcher et al. IS DENIED.

31. IT IS FURTHER ORDERED, That the above-captioned applications for renewal of license for Stations KNBR and KNBR-FM, San Francisco, California, filed by the National Broadcasting Company, Inc., ARE GRANTED, subject to the following conditions: (1) The outcome of U.S. v. National Broadcasting Company, Inc., Civil No. 72-819-RJK (C.D. Cal., Filed April 14, 1972); and (2) The licensee immediately notify the Commission of the final disposition of that case.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

APPENDIX A

Exhibit No. IV-A-3.—Section IV-A, page 1, part II, paragraph 4, programs broadcast in past year to serve public needs and interests

Title	Source	Type	Brief description	Time and duration	How often broadcast
Rap Session	Local	Public affairs	Discussion of community problems	7:30–8 p.m. Sundays	Weekly.
KNBR Youth Forum	do	do	Discussion of problems of youth by youths	8:05–8:30 p.m. Sundays	Do.
Men of Action	do	do	Discussion and interview on public affairs	9:05–9:30 p.m. Sundays	Do.
Faith Forum	do	Religious, public affairs.	Public affairs discussion by religious leaders	9:05–9:30 a.m. Sundays	Do.
The California Story	do	History	Features concerning California town and place names.	1 minute, various times	Various times.
San Francisco Street Names	do	do	Features concerning California street names and the men for whom they were named.	do	Do.
Focus on Civic Center	do	Public Affairs	Feature discussing a specific piece of legislation being presented to a county board of supervisors or city council in the Bay Area.	1 minute, twice per week starting September 1970, ending December 1970.	Twice per week.
Books and Authors	do	Educational	Interviews with authors of new books, and reviews of newly published works.	8:05–8:30 p.m. Sundays	Weekly.
Candidates and Issues	do	Public Affairs	Programs featuring candidates for public office and proponents of various ballot issues.	6:30–7 p.m. Sundays, October 1970.	4 special broadcasts.
Media vs. the Minorities	do	do	Discussion by minority representatives	7–8 p.m. Sundays, June 7–July 19, 1970.	7 special broadcasts.
Joyful Sound	do	Religion	Gospel music and sermons	8:05–8:30 a.m. Sundays	Weekly.
Radio Bible Class	do	do	Lessons from the Bible and songs by the "Men of Music".	8:30–9 a.m. Sundays	Do.
National Radio Pulpit	Network	do	Sermon	6:05–6:30 a.m. Sundays	Do.
Eternal Light	do	do	Sermon and talk	6:30–7 a.m. Sundays	Do.
Guideline	do	do	Discussion	7:05–7:30 a.m. Sundays	Do.
Herald of Truth	do	do	Sermon and talk	7:30–8 a.m. Sundays	Do.
Voice of Prophecy	do	do	Inspirational music and thought and sermon	8:30–10 a.m. Sundays	Do.
Meet the Press	do	Public Affairs	Discussion of current events	8:30–9 p.m. Sundays	Do.
Second Sunday	do	do	News specials	7–7:45 p.m. second Sunday of each month.	Second Sunday of each month.
Monitor	do	do	Public Interest Features	Saturdays and Sundays at various times.	Weekends—various times.
NBC Special Reports	do	do	Live coverage of national events	Live as scheduled	As scheduled.

NOTE

Programs underlined were designed to inform the public on local, national, or international problems of greatest public importance in the community.

All the programs listed above were on the air after September 1, 1970, except "Media vs. the Minorities." We have included this one because we think it is an outstanding example of response to expressed community meeds.

APPENDIX B

Year	Hours and minutes			Percent of total air time		
	1968[1]	1971[2]	1971[3]	1968[1]	1971[3]	1971[3]
KNBR:						
Proposed or actual hours of operation	165:00	165:00	165:00			
News	22:00	22:23	16:00	13.33	13.57	10.00
Public affairs	4:00	3:38	5:00	2.42	2.20	3.00
All other	5:00	6:21	5:00	3.03	3.84	3.00
Number of public service announcements	150	218	150			
KNBR-FM:						
Proposed or actual hours of operation	126:00	135:00	135:00			
News	10:00	12:35	8:00	8.0	9.32	5.00
Public affairs	3:15	1:25	4:15	2.6	1.04	2.60
All other	3:15	4:49	4:00	2.6	3.57	2.50
Number of public service announcements	150	365	150			

[1] 1968 proposals.
[2] 1971 composite week performance.
[3] 1971 proposals.

FCC 74-713

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
NU-VIEW, INC., WATERVILLE, N.Y.
Request for Special Relief
} SR-17213

MEMORANDUM OPINION AND ORDER

(Adopted July 2, 1974; Released July 10, 1974)

BY THE COMMISSION:

1. Nu-View TV, Inc., operates cable television systems at the New York Towns of Sangerfield, Madison, and Marshall, and in the Village of Oriskany Falls, and at Waterville (all in the Utica Smaller Television Market). On January 12, 1972, Nu-View filed a "Petition for Waiver of Section 74.1103 of the Commission's Rules" asking that its system at Waterville be exempted from the Commission's program exclusivity requirements *vis-a-vis* Television Broadcast Station WUTR (ABC), Utica, New York.[1] On February 11, 1972, the licensee of Television Broadcast Station WUTR filed an "Opposition of Roy H. Park Broadcasting of Utica-Rome, Inc., to Petition for Waiver of Section 74.1103 of the Commission's Rules." Nu-View filed a "Reply to Opposition to Petition for Waiver of Section 74.1103" on March 2, 1972, and on March 22, 1972, a "Supplement to Opposition of Roy H. Park Broadcasting of Utica-Rome, Inc." was filed.

2. Nu-View states that its systems are all operated from one headend and that each of them carries two stations affiliated with ABC: Television Broadcast Station WUTR, and Station WNYS-TV, Syracuse, New York. According to Nu-View, however, neither station is entitled to program exclusivity in Sangerfield, Madison, Marshall, or Oriskany Falls since both stations place predicted principal community contours over these communities. Nu-View concedes, however, that its system at Waterville (which presently has 353 subscribers) is located outside the predicted principal community contour of Station WNYS-TV. Although Television Broadcast Station WUTR has requested program exclusivity protection, Nu-View claims that compliance with the request would be expensive and unduly burdensome in view of the Waterville system's small size.

3. In its opposition, Roy H. Park argues that the cost of nonduplication equipment is not a valid ground for waiver; that it is incurring substantial yearly financial losses; that over forty percent of Nu-View's subscribers are residents of Waterville (where it claims the system has great growth potential); and that Television Broadcast Station WUTR is entitled to program exclusivity protec-

---

[1] Provisions comparable to former Section 74.1103 are now contained in Section 76.91 of the Commission's Rules.

tion in Waterville because of its predicted principal community contour and notwithstanding the fact that Nu-View has fewer than 500 subscribers.

4. Roy H. Park has not attempted to support its claim of economic injury with specific data, as required by the Commission, and we must, therefore, reject its claim. Compare *Central New York Cable TV, Inc.*, FCC 67-1381, 11 FCC 2d 150. Although the station has filed an engineering statement to verify its claim that Waterville is within its predicted principal community contour, it has not attempted to demonstrate specifically that it has suffered financial losses as a result of the operation of Nu-View's cable television system at Waterville. Furthermore, on April 4, 1974, the Commission released a *Report and Order in Docket No. 18785*, FCC 74-299, —— FCC 2d ——, in which we considered the problems encountered by operators of small cable television systems in complying with the network program exclusivity provisions.[2] The Commission concluded that the best policy generally is to exempt them from our requirements, which we amended, effective May 14, 1974, to reflect this decision. Roy H. Park has not demonstrated special circumstances to justify a departure from this general provision.

In view of the foregoing, the Commission finds that Nu-View's request for special relief now is moot.

Accordingly, IT IS ORDERED, That the "Petition for Waiver of Section 74.1103 of the Commission's Rules," SR-17213, filed January 12, 1972, by Nu-View TV, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, That the "Opposition of Roy H. Park Broadcasting of Utica-Rome, Inc. to Petition for Waiver of Section 74.1103 of the Commission's Rules" filed February 11, 1972, by Roy H. Park Broadcasting of Utica-Rome, Inc., licensee of Television Broadcast Station WUTR, Utica, New York, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

---

[2] Previously, the Commission had issued a Public Notice entitled "Temporary Modification of Processing Priorities in Section 74.1103 Waiver Cases," FCC 68-259, deferring action in cases concerning cable television systems with fewer than five hundred subscribers.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF PACIFIC BROADCASTING CORP., LICENSEE OF TELEVISION BROADCAST TRANSLATOR STATIONS K06HO, K06HA, K07HQ, and K13HV, MERIZO, GUAM
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted June 24, 1974; Released June 24, 1974)

1. The Commission, by the Chief of the Broadcast Bureau, acting pursuant to authority delegated by Section 0.281 of the Commission's Rules, has under consideration (1) four Notices of Apparent Liability for forfeiture dated March 20, 1973, issued to Pacific Broadcasting Corporation, the licensee of television broadcast translator stations K06HO, K06HA, K07HQ, and K13HV located on Guam, M.I. and (2) the licensee's response thereto dated April 12, 1973.

2. The Notices of Apparent Liability in this proceeding were issued, each in the amount of one hundred dollars ($100), for willful or repeated failure to observe the provisions of Section 1.539(a)[1] of the Commission's Rules in that the licensee filed the applications for renewal of license on February 28, 1973, which was 57 days beyond the due date of January 2, 1973. The Notices of Apparent Liability referred to the issuance of Public Notice 76726 of December 2, 1965 (6 RR 2d 472) entitled "FCC TO LEVY FORFEITURES ON LATE FILERS OF BROADCAST RENEWAL APPLICATIONS".

3. In a single response to the Notices of Apparent Liability the licensee requests that in each case the apparent liability for forfeiture be set aside and, in substance, states that Public Notice 76726 was directed to "broadcast station" license renewal applications and was not intended to be applicable to "television translator stations" which are governed by Part 74 of the Commission's Rules. The licensee states further that no notice of the Commission's forfeiture policy for untimely filing was received when it received the license renewal forms from the Commission, whereas the Notice of Apparent Liability stated that a copy of Public Notice 76726 was mailed with the renewal forms; that no other "licensee has ever been subjected to a notice of liability for the late filing of Part 74 renewal applications"; that it is not equitable to single out a particular licensee for a forfeiture without any advance notice and that if the Commission intends to

---

[1] At the time of the violations, Section 1.539(a) provided as follows: Unless otherwise directed by the Commission, an application for renewal of license shall be filed at least 90 days prior to the expiration date of the license sought to be renewed, except that applications for renewal of license of an experimental or developmental broadcast station shall be filed at least 60 days prior to the expiration date of the license sought to be renewed.

announce a new policy of assessing forfeitures against Part 74 licensees it should be done by a statement of policy in advance.

4. Public Notice 76726 does not contain any language restricting its applicability to any particular type of broadcast station.[2] Stations K06HO, K06HA, K07HQ, and K13HV are television broadcast translator stations licensed pursuant to Subpart G of Part 74, Section 74.701–74.784 of the Commission's Rules. Subpart G is entitled "Television Broadcast Translator Stations" and Section 74.701(a) describes a television broadcast translator station as "A station in the broadcasting service. . . ." We believe that the Public Notice of December 2, 1965 was sufficiently broad in its language to fairly notify all broadcast licensees of the Commission's policy of imposing forfeitures for untimely filing of applications for renewal of license of any type of broadcast station. In any event there is no requirement that the Commission notify licensees in advance as to the Commission's intentions regarding its policies for enforcing its Rules. Whether the Commission chooses to give advance notice is purely a matter of its discretion; otherwise the Commission would be continuously occupied with warning licensees of its policies of enforcement regarding specific Rules. Licensees must comply with the requirements of the Rules whether or not they are warned of the consequences for failure to comply. Therefore we find that licensee's contention that fairness dictated that we should have issued a separate or supplemental statement of policy specifically addressed to licensees of television broadcast translator stations is without merit.

5. Licensee also states that the applications were mailed on December 19, 1972 to its attorneys in Washington, D.C., that through an administrative oversight in the attorneys' offices these applications were not filed with the Commission until February 28, 1973, and that it will be careful in the future to assure that the applications are timely filed. It thus appears that the licensee was mindful that the due date for filing the applications with the Commission was January 2, 1973, ninety days prior to the expiration date of the licensee. The licensee further states that a notice of the Commission's policy of forfeiture for untimely filing was not received when it received the license renewal forms from the Commission, whereas the Notice of Apparent Liability stated that a copy of Public Notice 76726 was mailed with the renewal forms. Considering that the licensee mailed the application forms to its attorneys two weeks prior to the due date for filing thus allowing adaquate time for filing, it does not appear that the licensee was prejudiced in not receiving a special notice of possible forfeiture for late filing. Licensee will not be relieved of liability for forfeiture because counsel made a mistake through oversight. See *Industrial Broadcasting Co.*, 34 FCC 2d 950 (1971).

6. Considering the licensee's response and the circumstances of this case, we find that the licensee repeatedly violated Section 1.539(a) of the Commission's Rules from January 2, 1973 when the applications for license renewal were due until they were filed on February 28, 1973, and we are not persuaded to remit the forfeiture. As previously stated, the Commission does not intend to remit or mitigate this type of for-

---

[2] Public Notice 76726 of December 2, 1965, 6 RR 2d 472, is attached hereto as an Appendix.

feiture absent evidence of extraordinary, mitigating circumstances. *WPRY, Radio Broadcasters, Inc.*, 10 FCC 2d 549 (1967). In the present case, we do not find that such circumstances exist.

7. In view of the foregoing, IT IS ORDERED, That Pacific Broadcasting Corporation, the licensee of Television Broadcast Translator Stations K06HO, K06HA, K07HQ, and K13HV FORFEIT to the United States the sum of one hundred dollars ($100) with respect to each such station for repeated violation of Section 1.539(a) of the Commission's Rules, in the aggregate amount of four hundred dollars ($400). Payment of the forfeiture may be made by mailing to the Commission a check, or similar instrument drawn payable to the order of the Federal Communications Commission. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Rules of the Commission, an application for remission or mitigation of the forfeiture may be filed within thirty days from the date of receipt of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON, *Chief, Broadcast Bureau.*

FCC 74-676

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of
Liability of Radio Beaumont, Inc., Radio
Station KLVI, Beaumont, Tex.
For Forfeiture

Memorandum Opinion and Order

(Adopted June 25, 1974; Released July 9, 1974)

By the Commission:

1. The Commission has under consideration (1) its Notice of Apparent Liability for forfeiture dated July 26, 1973 in the amount of two thousand dollars ($2,000) issued to Radio Beaumont, Inc., the licensee of Radio Station KLVI, Beaumont, Texas and (2) the licensee's response thereto dated August 21 and November 20, 1973.

2. The Notice of Apparent Liability was issued for willful or repeated violation of Section 73.1206 of the Commission's Rules.[1] The violations concerned two telephone calls originated by the station which were broadcast simultaneously with their occurrences. The Commission received two complaints during the latter part of February and early March 1973, alleging that Gordon F. Baxter, Jr., a KLVI air personality, had broadcast telephone conversations with complainants, simultaneously with their occurrences, without having given them the notice required by Section 73.1206 of the Rules. Mr. B. B. Healan, who was the manager of Station KTRM, Beaumont, stated that on or about February 13, 1973, between 8:00 a.m. and 9:00 a.m., Gordon Baxter called him on the telephone and asked him some questions regarding Healan's initiating a rumor about Baxter's impending retirement from broadcasting. Mr. Healan, later in the day, was informed by relatives that his conversation with Baxter had been broadcast by Station KLVI on the Gordon Baxter Show. (Mrs.) Fay Carter, who was Media Director for the Vance Advertising Agency, an advertising and public relations firm located in Beaumont, stated that on February 2, 1973 at approximately 9:15 a.m., she received a telephone call at her office from Gordon Baxter; that Mr. Baxter identified himself, and stated that he wanted to clarify the situation regarding an advertising schedule for

---

[1] Section 73.1206 states as follows: Before recording a telephone conversation for broadcast, or broadcasting such a conversation simultaneously with its occurrence, a licensee shall inform any party to the call of the licensee's intention to broadcast the conversation, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast. Such awareness is presumed to exist only when the other party to the call is associated with the station (such as an employee or part-time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.

one of the agency's clients. An extensive conversation then ensued concerning this matter. The conversation ended with Gordon Baxter stating that the station would not make a charge for the spot announcements broadcast for the named client in January and on February 1. Mrs. Carter responded by saying "fine" and hung up the phone. A few minutes later Mrs. Carter received a phone call from a friend in the same business who informed her that she was "the star of the Gordon Baxter Show."

3. In response to a Commission inquiry, the licensee admitted that Gordon Baxter did engage in the telephone conversation with Mr. Healan and broadcast the same on or about the date alleged. However, the licensee stated that Mr. Healan was notified by Gordon Baxter that they (Healan and Baxter) were "on the air," and as a further and separate matter, Mr. Healan was "fully aware that he was on the air and conducted himself accordingly." A direct statement of Gordon Baxter was attached to the licensee's reply, which read as follows:

> I remember calling him—we were kidding around on the air about my "rumored retirement," a hoary old joke that is part of being one of the world's oldest living D.J. fossils. It had been alleged in local advertising and broadcast circles that Healan was "spreading such word." Healan knows I often call and get called by KAYC, KJET, KCAW, and my old home KTRM. He knows my schedule, knew I was on the air, and after laughingly denying that he started the rumor, we exchanged good wishes and he complimented me on my show. John, he was using his "broadcast" voice, and so was I. I thought it was a neat and friendly exchange. I don't recall telling anyone at KTRM that "we are on the air," but I would swear he knew it from his every word and manner. We "hoked" it up pretty good. After we hung up, I told the listeners I would never retire, that I had the frequency in the lower regions and that old Satan was holding a slot for me on the morning show down there.

It thus appears that the Baxter statement did not fully support the licensee's contention that Healan was notified by Baxter that he was on the air.

4. As to the telephone call to Mrs. Carter, the licensee admitted that the call was made by Baxter and that the conversation concerned the advertising account mentioned in the Carter complaint. However, the licensee claimed compliance with the requirements of Section 73.1206 because the receptionist at the Vance Advertising Agency "was clearly advised that Gordon Baxter was calling and that the conversation was on the air." In this connection the licensee stated that Mrs. Carter's employer, Mr. Vance, "frequently by choice has aired conversations with Gordon Baxter." No contention was made that Mrs. Carter was given any notice that the conversation was about to be or was in fact being broadcast. Baxter stated that he assumed either that Mrs. Carter "knew from custom" or that the receptionist had informed her that "it was Baxter on the air."

5. In response to the Notice of Apparent Liability the licensee attached statements of Gordon Baxter indicating that during the conversation Baxter advised Mrs. Carter and Mr. Healan that we are on the air, and that both knew that they were on the air.[2] The licensee also characterizes the entire matter as a local competitors' squabble

---

[2] In response to Commission inquiry prior to adoption of the Notice of Apparent Liability, Healan denied, without qualification, any awareness that his voice was being broadcast and denied that he was given any notice of being on the air.

and perhaps a form of "*personal* vendetta levied by Mr. Healan" and requests that the forfeiture be set aside and dismissed.

6. Section 73.1206 provides that the required notice of the licensee's intention to broadcast a telephone conversation need not be given when the party called is aware, or may be presumed to be aware from the circumstances of the conversation, that the conversation is being or is likely to be broadcast. The section also provides that awareness is presumed to exist *only* when the other party who is called is associated with the station, or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations. Neither the Carter nor the Healan call come within this presumption of awareness.

7. Resolving any conflicts of evidence in favor of the licensee in regard to whether or not a "you are on the air" or a "This is Gordon Baxter on the air" notice was given during the telephone calls, such notice does not meet the requirements for compliance with Section 73.1206 of the Commission's Rules as interpreted by the Commission's decision in *Ralph Weagant, tr/as Western Broadcasting Co.*, 38 FCC 2d 1195 (1972) in which we stated:

> Thus, a notice of intention to broadcast is required *before* the telephone call is broadcast.

As to whether or not the parties called were actually aware that their conversations were being broadcast, we find that the response of the licensee to the Notice of Apparent Liability fails to furnish any evidence, not heretofore considered, which serves to substantiate the licensee's contentions. We find that the licensee repeatedly violated Section 73.1206 by failure to give proper notice of intention to broadcast the Healan and Carter telephone calls. Considering all the circumstances in this case, we are not persuaded to set aside the forfeiture.

8. In view of the foregoing, IT IS ORDERED, That Radio Beaumont, Inc., the licensee of Radio Station KLVI, Beaumont, Texas, FORFEIT to the United States the sum of two thousand dollars ($2,000) for repeated violation of Section 73.1206 of the Commission's Rules. Payment of this forfeiture may be made by mailing to the Commission a check, or similar instrument, drawn payable to the order of the Federal Communications Commission. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Rules of the Commission, an application for remission or mitigation of the forfeiture may be filed within thirty days from the date of receipt of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74-230

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of RKO GENERAL, INC. (WOR-TV), NEW YORK, N.Y. For Renewal of Broadcast License	Docket No. 19991 File No. BRCT-71
MULTI-STATE COMMUNICATIONS, INC., NEW YORK, N.Y. For Construction Permit for New Television Broadcast Station	Docket No. 19992 File No. BPCT-4527

MEMORANDUM OPINION AND ORDER

(Adopted June 20, 1974; Released June 21, 1974)

BY THE REVIEW BOARD:

1. Before the Review Board for consideration is a petition to enlarge issues, filed April 30, 1974, by Multi-State Communications, Inc. (Multi-State),[1] directed against the renewal application of RKO General, Inc. (WOR-TV). Petitioner seeks the addition of a number of related issues inquiring into RKO General's news broadcasting practices, as well as *Suburban* and comparative efforts issues.[2]

2. Multi-State predicates its requests for news staging and related issues on a series of events described in an article published in the April, 1974, edition of "MORE" magazine and in an affidavit executed by the public relations manager of Radio Station WNYU, Eric Riback. According to petitioner, on March 6, 1974, Susan Rabinowitz production assistant at Station WOR, called Riback to inquire as to whether, *inter alia*, he could set up a "streaking" incident, which WOR would film the following day. Even though Riback refused to give any assistance in the matter, Multi-State alleges that Rabinowitz' request not only constitutes an attempt to stage a news event, but is also an attempt to induce public lewdness in violation of the New York

---

[1] Other related pleadings before the Board for consideration are: (1) opposition, filed May 20, 1974, by RKO General; (2) Broadcast Bureau's comments, filed May 21, 1974; and (3) reply, filed June 7, 1974, by Multi-State.

[2] Specifically, Multi-State requests the following issues: (1) To determine with respect to the application of WOR-TV: (a) Whether the licensee or any of its employees attempted to distort, falsify or misrepresent the news; (b) Whether the licensee or any of its employees sought to induce another person or persons to commit public lewdness in violation of the New York State Penal Code; (c) In view of the facts ascertained under issues (a) and (b) whether WOR-TV has demonstrated sufficient knowledge, control or supervision of its news operation; (d) What actions WOR-TV took to exercise control or supervision of its news operation subsequent to the disclosure of the facts ascertained and relevant to issues (a) and (b); (e) The efforts made by WOR-TV to ascertain the community needs and interests of the area to be served and the means by which it proposes to meet those needs and interests; (f) The significant differences, on a comparative basis, between WOR-TV and Multi-State with respect to the efforts made by each applicant to ascertain the needs, interests, and problems of the community it proposes to serve; and (g) Whether, in light of the evidence adduced pursuant to the foregoing issues, WOR-TV is disqualified to remain a licensee of the Commission or if not so disqualified, whether a comparative demerit or demerits should be assessed against it in this proceeding.

Penal Code. The "MORE" article also recites that this attempt is not an isolated incident, Multi-State continues, since it refers to statements allegedly attributable to WOR news personnel which indicate that staging practices are "commonplace" at the station. As a consequence of this alleged pattern and RKO's apparent knowledge of this practice, Multi-State also urges the addition of issues inquiring into RKO General's supervision of its news personnel and its efforts to take correction action.

3. While the Review Board agrees with Multi-State that the Riback affidavit serves to raise a question of whether a news employee of RKO General attempted to arrange or stage an event for filming, we do not agree, given the circumstances here, that the requested issues are warranted.[3] The primary basis for our determination is the fact that this incident, even if it were to be established as an unsuccessful attempt to stage news, appears to be an isolated act on the part of a nonmanagerial employee. Thus, Multi-State has failed to substantiate its allegations concerning the involvement of station management in any pattern of improper news practices.[4] Moreover there is no indication, whatsoever, with respect to this incident, that the news staff or management had any intent to misrepresent the nature of the footage in the event it were presented in a news format. However, to the extent that this incident relates to RKO General's past broadcast record, it may be considered under the standard comparative issue.

4. Multi-State contends that RKO General's *Suburban* showing is defective in several important respects. As an initial matter, petitioner alleges that the licensee failed to adequately survey its principal city of license, since it concentrated its ascertainment efforts in the Borough of Manhattan, which is only one of the five populous boroughs which comprise the city.[5] Moreover, despite this concentration of effort, petitioner alleges that RKO General's failure to contact representatives of any fraternal organizations and only one leader of a political association in Manhattan constitutes a failure to adequately contact significant community groups. Given the number of such organizations in Manhattan alone (80 and 100, respectively), Multi-State reasons that they must be regarded as significant community groups. Third, Multi-State claims that RKO General made only a token effort to ascertain the needs and interests of areas outside its community of license; as support for this proposition, petitioner refers to three densely-populated counties in which RKO General conducted only one community leader consultation.[6] As further indication of RKO General's disregard for its secondary service area, Multi-State alleges that

---

[3] As an initial matter, the Board notes that the Commission is not an appropriate forum in which to determine whether RKO General or any of its employees attempted to induce the commission of a criminal act. See *Lamar Life Broadcasting Co.*, 26 FCC 2d 112, 20 RR 2d 509 (1970); *Northeast Oklahoma Broadcasting, Inc.*, 40 FCC 2d 543, 27 RR 2d 144 (1973).

[4] As the Broadcast Bureau correctly notes, the representations contained in the "MORE" article are unverified hearsay and, as such, must be disregarded. See Section 1.229(c) of the Commission's Rules.

[5] The disparity in efforts is particularly significant with respect to the Borough of Richmond (Staten Island) in which the licensee conducted only two community leader consultations, petitioner asserts, since this somewhat unique borough ". . . is an island, completely surrounded by water and connected to the rest of the city by ferries and bridges."

[6] Multi-State recites that RKO General made no community leader contacts in the New Jersey County of Morris and the Connecticut County of Fairfield, and but one interview in the New York County of Rockland.

the licensee refused to cover an event in one of these counties upon being requested to do so. Finally, petitioner requests the addition of a comparative efforts issue, generally arguing that, in comparison to RKO General's concentration on governmental leaders in Manhattan, its survey efforts are significantly more comprehensive both in terms of community groups surveyed and in coverage of its entire proposed service area.

5. Multi-State's request with respect to RKO General's ascertainment efforts will also be denied. The *Primer*[7] requires an applicant to show consultations with leaders of groups and organizations that represent the various elements of the community. An applicant's determination of the composition of its proposed community may be challenged by a showing, which includes supporting data, that a significant group has been omitted. In our view, however, Multi-State's showing in this regard is severely deficient. Thus, other than indicating the number of fraternal and political organizations (as gleaned from the telephone directory) the petitioner has made no attempt to demonstrate that such groups are, in fact, distinctive in any manner or that they wield the kind of influence or lack thereof which merits special consideration by an applicant in its survey efforts.[8] See Question and Answer 10 of the *Primer*. Similarly, Multi-State has not shown that the political sub-divisions of New York City constitute a specific group or groups which are distinct from the remainder of the community. Petitioner's criticism of RKO General's survey efforts outside its city of license is not well founded. As noted by the Broadcast Bureau, the licensee has conducted over a hundred interviews with community leaders in its proposed secondary service area, and Multi-State has not alleged that these leaders do not reflect a broad overview of the problems which exist in the area. Additionally, contrary to Multi-State's suggestion. an applicant is not required to contact leaders of every political subdivision of its proposed service area, particularly when an applicant seeks to serve a large metropolitan area such as New York. Finally, Multi-State's request for a comparative efforts issue must be rejected. Petitioner's generalized allegations of superiority do not provide the detailed showing of significant disparity in quality or quantity of the applicants' respective efforts to warrant the addition of the issue. *WPIX, Inc.*, 23 FCC 2d 245, 19 RR 2d 182 (1970) : *RKO General, Inc.* (*WNAC-TV*), 25 FCC 2d 633, 19 RR 2d 1079 (1970).

6. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed April 30, 1974, by Multi-State Communications, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

---

[7] *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650. 21 RR 2d 1507 (1971).

[8] It should also be noted in this connection that petitioner has not alleged that RKO General failed to consult with elected and/or governmental officials.

FCC 74R-247

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of RKO GENERAL, INC. (WOR-TV), NEW YORK, N.Y. For Renewal of Broadcast License	Docket No. 19991 File No. BRCT-71
MULTI-STATE COMMUNICATIONS, INC., NEW YORK, N.Y. For Construction Permit for New Television Broadcast Station	Docket No. 19992 File No. BPCT-4527

MEMORANDUM OPINION AND ORDER

(Adopted June 28, 1974; Released July 5, 1974)

BY THE REVIEW BOARD:

1. The Commission designated the mutually exclusive applications of RKO General, Inc. (RKO), for renewal of license to operate WOR-TV, Channel 9, New York, New York, and Multi-State Communications, Inc. (Multi-State) for a construction permit for a new television station on the same channel, for hearing by Order, 46 FCC 2d 246, released April 10, 1974. The Review Board now has before it a motion to enlarge issues, filed April 30, 1974, by RKO,[1] which seeks the addition of misrepresentation, *Suburban*, character, Rule 1.65, staffing and financial issues against Multi-State.

MISREPRESENTATION AND SUBURBAN ISSUES

2. RKO asserts that Multi-State's application misrepresents community leader interviews purportedly conducted pursuant to the Commission's *Primer*[2] guidelines. That is, RKO alleges, it has contacted sixty-three leaders listed by Multi-State who either deny or do not recall being interviewed by Multi-State's principals or representatives. Supporting affidavits are attached[3] and RKO states that they include: (a) some persons who did not recall the contacts even though they recognized the name of at least one Multi-State principal; (b) some who stated they had never been contacted and asked about community problems; (c) some who offered specific reasons as to why they would re-

---

[1] Also before the Board are: an opposition, filed May 20, 1974, by Multi-State; a petition for acceptance of late filed pleadings, filed May 21, 1974, by the Bureau; comments, filed May 21, 1974, by the Broadcast Bureau; a reply, filed June 7, 1974, by RKO; a petition for leave to file supplemental pleading, filed June 17, 1974, by Multi-State; a response to reply, filed June 17, 1974, by Multi-State; and an opposition, filed June 20, 1974, by RKO. The last three pleadings are unauthorized under our Rules and, accordingly, will be dismissed.

[2] *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971).

[3] RKO asserts that it read each community leader a list of the names of the Multi-State principals when obtaining the affidavits.

call such a contact had it occurred; and (d) some who recalled being interviewed by RKO, but not by Multi-State. RKO contends that these materials support addition of a broad misrepresentation issue to explore whether other leaders purportedly interviewed by Multi-State were in fact contacted. RKO also submits that its allegations necessitate addition of a *Suburban* issue because they show that Multi-State has not established a personal dialogue with its proposed community as required by the Commission's *Primer*, *supra*. Another deficiency, RKO contends, lies in the apparent fact that a number of Multi-State's interviews were with business or other associates of its principals and thus too casual to satisfy Commission requirements. This failure, RKO concludes, also reinforces the need for a misrepresentation issue since it belies Multi-State's representation that it complied with the *Primer's* requirements.

3. In opposition, Multi-State submits affidavits from its corporate principals responsible for conducting the disputed interviews; therein, each principal avers to the contact in question. Multi-State also submits affidavits from sixteen community leaders (of the contested sixty-three) who were recontacted and who, thereupon, either recalled the interview or stated that it was possible one took place. Some of these persons, Multi-State asserts, are in fact among those who stated in the affidavits submitted by RKO that they would recall such a survey had it occurred. This conflict in affidavits, Multi-State contends, is explained by the fact that the purported interviews took place over two years ago. Multi-State further argues that several of the printed affidavits submitted by RKO were modified by the affiants in a fashion which allegedly reduces their significance. And, Multi-State charges, at least one of the RKO affidavits was obtained by "pressuring" the affiant with the prospect of being subpoenaed to testify at a hearing in Washington, D.C. as an alternative to executing the affidavit. In response to RKO's allegations of a deficient *Suburban* showing, Multi-State argues that it has complied with the *Primer's* primary purpose of ascertaining community needs and planning responsive programming. Maintaining a continuing dialogue with community leaders, Multi-State contends, is not of principal importance, at least not until it is a licensee. Finally, Multi-State submits, its contacts with leaders were not casual, but in fact produced comments on area problems which were included in its application.

4. The Board will add the requested misrepresentation issue. Although Multi-State has submitted materials which reaffirm some of the contacts in question, it appears that a significant number of the community leaders either deny or do not recall the interviews represented in Multi-State's application. We have repeatedly held that this is sufficient grounds for addition of a misrepresentation issue. *Itawamba County Broadcasting Co., Inc.*, 46 FCC 2d 60, —— RR 2d —— (1974); *Belo Broadcasting Corporation*, 42 FCC 2d 1011, 28 RR 2d 732 (1973); *California Stereo, Inc.*, 39 FCC 2d 401, 26 RR 2d 887 (1973). In light of the large number of suspect contacts, we reject Multi-State's argument that the passage of time is an exculpatory factor.[4] Moreover, the submission by Multi-State of affidavits from its

---

[4] We also dismiss as unsupported and speculative Multi-State's claims of alleged pressure tactics employed by RKO to secure the affidavits in question.

principals averring to the existence of the interviews is not sufficient to resolve the controversy. See *WIOO, Inc.*, 40 FCC 2d 643, 27 RR 2d 204 (1973). In our view, however, petitioner has raised no other substantial questions as to the adequacy of Multi-State's community leader survey and therefore a separate issue inquiring into its efforts is unnecessary. RKO's claims concerning the alleged casual nature of the contacts are insufficiently detailed, and its allegation that Multi-State limited its interviews to business or other associates of its principals is based only on speculation and surmise.

CHARACTER ISSUES

5. RKO seeks issues to determine whether Multi-State has violated the registration requirements for stock issuance under the Securities Act of 1933. RKO states that Multi-State sought an exemption from filing a registration statement in connection with the issuance of is shares and subscription agreements by making its offering a private one under Section 4 of the Act. However, RKO alleges, Multi-State's offering was in fact made to the public at large and particularly to a number of unsophisticated investors who required the protection the registration provisions of the Act are designed to provide. RKO lists the names of several allegedly unsophisticated subscribers to Multi-State's stock and claims that there is nothing in the Multi-State application which would serve to apprise these persons of the allegedly risky nature of their investment. These circumstances, RKO submits, reflect on Multi-State's character as a potential licensee.

6. The Board is of the view that the matters raised herein are clearly within the province and expertise of another government agency, the Securities and Exchange Commission. As pointed out by the Broadcast Bureau, RKO has made no effort to show that it has raised these questions with that agency or that the SEC has taken any action with respect to Multi-State. It has been our usual practice not to intervene in matters of alleged violations of local or federal law where the forum entrusted with enforcement of those laws has not been consulted initially. *Northeast Oklahoma Broadcasting, Inc.*, 40 FCC 2d 543, 27 RR 2d 144 (1973); *Bangor Broadcasting Corp.*, 33 FCC 2d 687, 23 RR 2d 883 (1972); *Lamar Life Broadcasting Company*, 26 FCC 2d 112, 20 RR 2d 509 (1970). We see no reason to depart from this practice in this case, particularly since RKO's allegations are largely speculative and unsupported by substantiating facts or affidavits.[5] *Cf. Lamar Life Broadcasting Company, supra; Sumiton Broadcasting Co.*, 15 FCC 2d 410, 14 RR 2d 970 (1968). Therefore, we will deny the requested issues.

RULE 1.65

7. RKO alleges that Multi-State's application is inaccurate or incomplete in the following respects: First, Multi-State incorrectly reported in a March 8, 1974, amendment to its application that John S.

---

[5] We note in this respect the affidavit of Charles O. Blaisdell, president of Multi-State, submitted with its opposition, which recites a business or social relationship with each of Multi-State's twenty-three stockholders.

Cizek had inherted the interest in Multi-State of his father, R. Leslie Cizek, upon the latter's death on December 19, 1973. In fact, RKO claims, Cizek's will, a copy of which is attached to its pleading, names the son as a co-executor and not as stock recipient. Second, the amended application lists John P. Sellas as a subscriber although he was dropped as a subscriber in an earlier amendment; and the earlier amendment listed Anna C. Cicchelli as a subscriber although she is not listed in the March 8, 1974, amendment. Third, the balance sheets of Multi-State stockholders Basil A. Paterson and Charles O. Blaisdell, III contain statements to the effect that extensions have been sought for filing their 1971 income tax returns; however, the Multi-State application has not been amended to indicate whether either filed a return for that year.

8. In opposition, Multi-State submits that on May 17, 1974, it filed an amendment to its application which corrects or completes its earlier filings. Specifically, Multi-State avers, that amendment reports that John S. Cizek purchased the stock interest of his father, and did not inherit it as previously reported. In support of the legality of such a sale, Multi-State submits a letter from counsel for the executor of the Cizek estate and a copy of the stock transfer certificate. Multi-State also states that John P. Sellas, a 1% stockholder, withdrew and was replaced by Anna C. Cicchelli. The March 8, 1974, amendment, which incorrectly listed Mr. Sellas as a stockholder, is corrected by the May 17, 1974, amendment, Multi-State submits. Finally, Multi-State acknowledges, its latest amendment also supplies the 1971 income after taxes information for Messrs. Paterson and Blaisdell, III. Its errors of omission were inadvertent, Multi-State argues, and submits that no issue is warranted. In reply, RKO contends that Multi-State's May 17, 1974, amendment constitutes an impermissible upgrading of its application subsequent to designation and that Multi-State possessed the correct information but chose not to file it until RKO filed the instant motion to enlarge.[6]

9. Although it appears that Multi-State could and should have acted at an earlier date to attempt to amend its application, the Board is of the view that none of the omissions in question is serious enough to warrant the addition of an issue. Thus, the failure to accurately list the ownership of 1% of Multi-State's outstanding stock and the omission of the income after taxes of two of its stockholders do not in themselves reflect adversely on the applicant's qualifications; moreover, we have no reason to question Multi-State's assertion that these errors were inadvertent. With respect to the Cizek stock, RKO offers no specific support for its contention that the error involved was a significant one or that it would result in a comparative advantage to Multi-State. Also, RKO's arguments with respect to "upgrading" are more appropriately directed to the issue of good cause for post-designation amendments, *i.e.*, the question submitted to the Presiding Judge with respect to Multi-State's May 17, 1974, amendment,[7] and

---

[6] RKO also submits that Multi-State has violated Rules 1.594 (a) and (d) involving local notice of designation for hearing. These allegations, however, require no further discussion because they are inappropriately placed in a reply pleading. See Industrial Business Corp., 40 FCC 2d 69, 26 RR 2d 1447 (1973).

[7] By Order, FCC 74 M–669, released June 11, 1974, the Presiding Judge accepted Multi-State's amendment.

do not cure its basic failure to show an intentional or serious violation of Rule 1.65 by the competing applicant. For these reasons, the requested issue must be denied.

STAFFING

10. In support of its request for a staffing issue, RKO alleges that Multi-State originally proposed to broadcast seven hours and forty-eight minutes of news per week with a news department of twenty-two full time employees and an unspecified number of news stringers. On January 23, 1974, RKO contends, Multi-State upgraded its news proposal by better than fifty percent to eleven hours and forty-seven minutes, but made no adjustment in its proposed news staff. RKO refers to several stations in the New York market which it alleges carried less news programming than Multi-State proposes but with substantially greater news staffs. RKO also submits an affidavit of George W. Snowden, its Vice-President (Divisional Title) of Programming and Operations, who avers that Multi-State's proposal cannot be effectuated without an additional nine to eleven employees. Since Multi-State does not explain how it would effectuate its proposal, RKO argues, the Board should add a broad issue, not limited to only the news staff.

11. In opposition, Multi-State argues that RKO's request is supported only by the self-serving statement of one of its principals. RKO's reference to other stations in the New York area is misleading, Multi-State contends, because there is no logical relationship between the number of hours of news and the news staff.[8] Moreover, Multi-State submits, the comparisons are faulty because they do not detail the proportion of network news involved. Finally, Multi-State maintains, RKO's request for a staffing issue to include all program activities is totally unsupported.

12. The Board will deny the requested issue. RKO's mere recitation of Multi-State's news programming proposal and assertion that the related staff is inadequate are insufficient grounds for addition of an issue. *Cf. Radio Geneva, Inc.*, 42 FCC 2d 254, 27 RR 2d 1680 (1973). As the Broadcast Bureau points out, differences between Multi-State's proposal and those of licensees in the New York area may only reflect differences in judgment, and not an inadequate proposal. In our view, Multi-State's proposal for twenty-two news employees plus stringers is not on its face unreasonable, and in the complete absence of specific allegations from RKO to challenge the proposal, we will not add an issue. See *Radio Geneva, Inc., supra; Colorado West Broadcasting, Inc.*, 39 FCC 2d 407, 26 RR 2d 893 (1973); *Jay Sadow* (*WRIP*), 27 FCC 2d 248, 20 RR 2d 1171 (1971). Finally, in light of the absence of any showing of inadequacy of Multi-State's proposed news staff, a general staffing issue is equally unwarranted.

---

[8] That is, Multi-State points out, WNEW-TV and WOR-TV programmed 6:03 and 6:30 hours of news per week respectively; yet WNEW-TV employed a staff of forty-six and WOR-TV had a staff of twenty.

FINANCIAL

13. RKO seeks issues to determine whether Multi-State will have sufficient funds (a) to meet payments on a proposed bank loan during its first year of operation and (b) to sustain the proposed station during the second year of operation. With respect to (a), RKO states that Multi-State plans to rely on a $4,000,000 loan from the Chase Manhattan Bank but has failed to plan for at least $702,667 in payments on the loan due during the first year. Specifically, RKO explains that Multi-State will borrow $1,140,000 of the total at the date of grant, that it proposes to go on the air six months after grant of a construction permit, and that its bank letter will require principal repayments falling in its sixth and twelfth months of operation. These payments, RKO asserts, will be $142,500 each and interest for the eighteen month period will be $114,713. In addition, RKO asserts, Multi-State will owe interest on the remaining $2,860,000 and at least one semi-annual principal payment totalling together another $302,954. Moreover, RKO alleges, the lending bank's prime interest rate has more than doubled since the time of Multi-State's loan agreement, and RCA, from whom Multi-State has an equipment credit, has raised its discount finance rate from 4.5% to 7%. These increases, RKO submits, will add $233,789 to Multi-State's interest expense on its bank loan and nearly $6,000 per month to its equipment payments.[9] With respect to (b), RKO argues that Multi-State's financial proposal must be carefully scrutinized because it proposes to defer substantial equipment and loan repayments beyond the first year of operation. RKO alleges that Multi-State's payments will be at least $818,545 in the first year ($702,667 in loan payments and $115,878 in equipment payments) and $1,887,624 in the second year ($695,184 for equipment payments, $1,000,000 for loan payments, and interest of $192,500), for a two year total of $2,705,729. RKO contends that Multi-State will virtually exhaust its capital and loan funds by the end of its first three months of operation and will therefore have to rely on profits to meet its heavy debt schedule. However, RKO submits, Multi-State has neglected to provide or has inadequately provided for several expenses such as antenna cost and legal and engineering fees, and has modified various other expense items by recent amendment without explanation. In these circumstances, RKO argues that an inquiry into Multi-State's financial viability in the second year of operation is required.

14. In opposition to the first requested issue, Multi-State contends that it has sufficient funds to meet all expenses including equipment down payments during its first three months of operation, and that it will meet all operating expenses after that period including repayments of bank loans and equipment payments through estimated revenues of $11,441,000 during the last nine months of the first year. Multi-State claims that its construction and three month operating expenses amount to $4,099,150 and that they will be met by capital and loan funds of $4,314,252, leaving a surplus of $215,102. Apart from the down payment, Multi-State maintains, no other equipment payments

---

[9] RKO also argues that interest under the RCA letter of credit was incorrectly computed in the designation Order to be $17,027, but should be $21,284.

will be required until after the first three months of operation when they will be met by station revenues. Interest on the bank loan, except for the first payment, and principal also will not be due until after the first three months, Multi-State argues, and can be met by revenues. Multi-State contends that the allegations regarding increased interest rates by RCA and Chase Manhattan are speculative, but that, in any case, its cash requirements during the first three months would not be significantly affected by such changes, and later increases could be met by relying on revenues. With respect to its second year of operation, Multi-State submits figures showing that New York City television stations generated average revenues of $19,928,593 in 1972 and average profits of $4,795,413. These amounts, Multi-State contends, are more than enough to offset additional expenses RKO alleges it will incur. Multi-State submits that RKO has cited no precedent which would support an inquiry into second year operating costs of an applicant for an existing facility, as opposed to a new station. For these reasons, no question as to the adequacy of its allocated funds has been raised, Multi-State concludes.

15. The Board will deny the requested issues. The dispute before us essentially involves the question of when an applicant may look to anticipated station revenues to support its financial showing. Whereas, ordinarily, an applicant seeking to rely on revenues would need to demonstrate the availability of that revenue,[10] in renewal proceedings, such as this one, no such showing is necessary because of the licensee's history of advertising revenue. Thus, an applicant such as Multi-State must establish its ability to meet its costs of construction and operation for a three month period until the previously established revenues can be generated.[11] Thereafter, in our view, an applicant may look to revenues to meet costs as they fall due, including repayments of loans. RKO's position, we believe, is not in accordance with that of the Commission in its most recent designation Orders in renewal proceedings including the instant one. See *CBS, Inc.*, FCC 74–363, —— FCC 2d ——, released April 24, 1974; *Post-Newsweek Stations of Florida, Inc.*, FCC 74–362, —— FCC 2d ——, released April 24, 1974. Therefore, in light of the substantial revenues available to VHF television stations in the New York market, we perceive no reason to modify the financial issue in this proceeding to inquire into Multi-State's ability to meet its first year loan repayments.[12] With respect to the second year of operation, the situation is similar. In the past, the Commission has in some cases expressed concern as to an applicant's continuing financial ability where, *inter alia*, it had deferred substantial loan repayments to the second year, had a high debt to equity ratio, and had not shown an ability to raise necessary second year funds through revenues or other sources. See *Lexington County Broadcasters, Inc.*, 40 FCC 2d 694, 27 RR 2d 416 (1973). In this case, however, the average figures for revenue and profit in the New York

---

[10] *Ultravision Broadcasting Co.*, 1 FCC 2d 545, 5 RR 2d 343 (1965).

[11] *Orange Nine, Inc.*, 7 FCC 2d 788 (1967).

[12] Nor will we authorize an inquiry into the applicable interest rates. Both the equipment letter and the bank letter specify that the rates will be those current at the time of shipment or advance and it does not appear to us unreasonable for the applicant to have based its estimates on the rates in effect at the time it filed its application. See *Belo Broadcasting Corp.*, 41 FCC 2d 703, —— RR 2d —— (1974).

area submitted by Multi-State are substantial[13] and, in our view, are more than adequate to meet second year loan and equipment payments as well as those continuing operating costs RKO alleges are not adequately budgeted for. Moreover, RKO's allegations in the latter respect are either cumulative because some of these costs were placed in issue by the designation Order, or totally unsupported by affidavits or other substantiation. For these reasons, the second requested financial issue will also be denied.

16. Accordingly, IT IS ORDERED, That the petition for acceptance of late filed pleadings, filed May 21, 1974, by the Broadcast Bureau, IS GRANTED; and

17. IT IS FURTHER ORDERED, That the petition to file supplemental pleading and response to reply, both filed June 17, 1974, by Multi-State Communications, Inc., and the opposition to petition for leave to file supplemental pleading, filed June 20, 1974, by RKO General, Inc., ARE DISMISSED; and

18. IT IS FURTHER ORDERED, That the motion to enlarge issues, filed April 30, 1974, by RKO General, Inc., IS GRANTED to the extent indicated herein, and IS DENIED in all other respects, and that the issues in this proceeding ARE ENLARGED as follows:

> To determine, whether Multi-State Communications, Inc. misrepresented facts to the Commission in connection with its survey of community leaders, and, if so, to determine the effect of this conduct on the qualifications of Multi-State Communications, Inc. to be a Commission licensee.

19. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the issue added herein SHALL BE on RKO General, Inc. and the burden of proof SHALL BE on Multi-State Communications, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

---

[13] We also note that neither the bank loan nor the equipment credit proposed by Multi-State are to be paid entirely during the second year of operation. Compare *5KW, Inc.*, 33 FCC 2d 895, 23 RR 2d 1015 (1972), where the Commission viewed such an arrangement as significant in designating an inquiry into the second year of operation costs.

FCC 74R-222

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SOUTHEAST ARKANSAS RADIO, INC., DERMOTT, ARK. For Construction Permit	Docket No. 19474 File No. BP-18476

APPEARANCES

B. Jay Baraff, on behalf of Southeast Arkansas Radio, Inc.; *Samuel Miller* and *Mark E. Fields*, on behalf of Southeast Arkansas Broadcasters, Inc. (KVSA); and *Robert B. Nelson* and *Theodore D. Kramer*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted June 12, 1974; Released June 18, 1974)

BY THE REVIEW BOARD: BERKEMEYER AND PINCOCK, BOARD MEMBER KESSLER DISSENTING WITH STATEMENT

1. This proceeding involves the application of Southeast Arkansas Radio, Inc. (Southeast) for authority to construct a new daytime-only standard broadcast station at Dermott, Arkansas.[1] In an Initial Decision, FCC 73D-37, released June 27, 1973, Administrative Law Judge Jay A. Kayle concluded that the applicant had met the outstanding *Suburban*, financial qualifications and public file issues specified against it, and recommended grant of its application. Exceptions and a brief in support thereof were filed by Southeast Arkansas Broadcasters, Inc. (KVSA),[2] and replies to exceptions were filed by Southeast and the Broadcast Bureau.

2. The Review Board has carefully considered the Initial Decision in light of the exceptions and briefs, the arguments of the parties[3] and its examination of the record. Based upon this review, the Board is satisfied that the Presiding Judge's findings of fact are thorough and accurate in all significant respects. Consequently, except as modified herein and in the rulings contained in the attached Appendix, his

---

[1] On March 24, 1972, the Commission released a Memorandum Opinion and Order (FCC 72-235, 37 FR 6516, published March 30, 1972) designating the application for hearing with the mutually exclusive applications of Patrick H. Robinson, Monroe, Louisiana (dismissed with prejudice by Order released May 24, 1972 (FCC 72M-682)), and Robert Cowen Wagner (Wagner), Pineville, Louisiana. Subsequently, the Review Board added *Suburban*, financial, comparative Rule 1.65, Rule 1.594 and Section 307(b) programming issues against Southeast. (38 FCC 2d 403, 25 RR 2d 1095 (1972) and 38 FCC 2d 1187, 26 RR 2d 429 (1973).) On April 5, 1973, Southeast and Wagner filed a joint request pursuant to Section 1.525, to sever their applications, partially amend the application of Southeast, reimburse Southeast and grant Wagner's application. The joint request was granted by Order, FCC 73M-506, released on April 25, 1973. The Order mooted all issues except those relating to the basic qualifications of Southeast to be a Commission licensee, *i.e.*, the *Suburban*, financial and Rule 1.594 issues.

[2] On May 1, 1972, the Presiding Judge granted a petition to intervene filed by Southeast Arkansas Broadcasters, Inc., licensee of Station KVSA, McGehee, Arkansas (FCC 72M-568).

[3] Oral argument was held before a panel of the Review Board on April 2, 1974.

findings of fact are adopted. Further, the Judge's conclusions under the financial and public file issues are accurate, generally complete[4] and fairly reflect the record; they are, therefore, also adopted by the Board.[5] However, for the reasons discussed, *infra*, we are of the opinion that Southeast's programming proposal does not comport with the requirements of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*,[6] and therefore that it has failed to establish its requisite qualifications to become a Commission licensee. The reasons for our determination that the applicant did not meet its burden under the *Suburban* issue are set forth below.

3. Southeast's *Suburban* showing was amended and supplemented on four separate occasions,[7] originally to update the showing and later to attempt to rectify certain deficiencies pointed out in a Memorandum Opinion and Order, 38 FCC 2d 403, 25 RR 2d 1095 (1972), wherein the Review Board added a *Suburban* issue. In all, 129 community leaders, representative of a broad cross-section of population groupings, and 170 members of the general public, randomly selected, were consulted to determine the problems, needs and interests of their respective communities.[8] Approximately 99 needs were elicited from these interviews. To meet these needs Southeast proposes five programs, including a weekly one-hour call-in program, a forty-five minute report from state and federal representatives, two hours of religious programming on Sunday, a week-day 10 to 15 minute agricultural report which will be expanded to Saturday or Sunday if well accepted, and five minutes per hour newscast daily. In addition, Southeast states that it is prepared to give new problems special treatment as conditions might warrant.[9] However, the record discloses that the applicant is primarily relying upon its one-hour weekly call-in program for meeting the needs uncovered by its survey; eighteen of the twenty-one ascertained needs Southeast proposes to meet will be dealt with on the call-in program.[10]

---

[4] Although no explicit favorable resolution of the public file issue is articulated in the Initial Decision, this conclusion is implicit in the Administrative Law Judge's grant of Southeast's application.

[5] On May 29, 1974, Southeast filed a petition with an amendment attached thereto, requesting that the Review Board reopen the record, grant the attached amendment and reclose the record. The amendment reports a purchase of bank stock by Bennie F. Ryburn, Sr. and states that the purchase will in no way affect the availability to Ryburn of a bank loan, with which he proposes to meet his financial commitment to Southeast. Although the Broadcast Bureau suggests in a set of comments that Southeast should submit a letter from the bank indicating its continued willingness to furnish the loan, the Review Board is of the view that the acquisition of the bank stock does not raise a substantial question concerning the availability of the bank loan.

[6] 27 FCC 2d 650, 21 RR 2d 1507 (1971).

[7] Aside from the initial survey conducted in conjunction with the preparation of its application, Southeast conducted a second survey in 1969, two in 1971 and one in 1973.

[8] This tally does not include the lists of community leaders and members of the general public contained in Southeast's two initial surveys. As to those surveys, the record does not indicate to what extent the community leaders were interviewed by principals, management-level employees or prospective management-level employees, or whether the parties conducting interviews of the general public fit into the authorized categories set forth in the *Primer, supra,* Q & A 11(a) and (b). Accordingly, the two early surveys shall be disallowed.

[9] Essentially, Southeast's proposed programming has remained constant throughout this proceeding notwithstanding that the applicant has conducted five separate surveys to ascertain community needs.

[10] Although approximately 99 needs and interests were listed in Southeast's *Suburban* showing, only 21 needs are explicitly listed to be treated by its programming proposal. In addition to 18 needs relating to the call-in program, Southeast recites "that many of the problems discovered, such as, by way of limited example, pollution control . . . improvement of local streets and area highways . . . recreation development and other matters . . ." will be treated by its news programming to the extent that governmental agencies are involved in proposing or enacting legislation to deal with these problems.

4. In our view, the applicant's programming proposal, when measured against the broadcast format guidelines set forth in the *Primer*, contains two significant deficiencies.[11] First, the generalized fashion in which the applicant has couched its proposal[12] reflects but a token effort to comply with the specificity requirement enunciated in Q & A 29 of the Primer. Rather than the standard utilized by the Presiding Judge, *i.e.*, that the applicant has the means to develop programming to meet the needs of its proposed service area, question and answer 29 calls for the description, anticipated time segment, duration, frequency of broadcast and the community problem or problems that will be treated by the applicant's broadcast matter. Moreover, applicants are admonished that statements such as "talk and discussion programs will be used to meet community problems" will be clearly insufficient. Southeast's programming, however, is designed to treat the bulk of ascertained needs the applicant has chosen to meet through the vehicle of a weekly one-hour call-in program. This lack of a definitively responsive program format, we believe, clearly falls into the category which the Commission has sought to discourage. As a consequence, the proposal must be regarded as too vague and general to ensure that the needs and interests uncovered by the applicant's surveys will play a substantive role in shaping what is actually to be presented on the air.[13]

5. Second, and even more critical, although the *Primer* (Q & A 31) provides that the amount of programming required to deal with ascertained needs is a matter falling within the discretion of the applicant, that discretion is not without limitation, particularly when, as here, the amount does not appear consistent with the public interest. The very modest amount of broadcast matter proposed by Southeast does not satisfy the *Primer's* injunction that an applicant devote a significant proportion of its broadcast week to programming designed to meet the needs that it has ascertained. Most indicative of this inadequacy is Southeast's plan to deal with 18 out of 21 problems deemed worthy of attention on a weekly one-hour call-in program. In our view, Southeast's primary reliance on this single somewhat ill-defined program to respond to local needs does not constitute a reasonable allocation of responsive broadcast matter, particularly since there are no existing broadcast stations or daily newspapers in this county. In sum, the amount of programming proposed here is patently insufficient to meet the community problems disclosed by the applicant's consultations. See *Risner Broadcasting, Inc.*, 32 FCC 2d 75, 23 RR 2d 61

---

[11] In *Voice of Dixie*, 45 FCC 2d 1027, —— RR 2d —— (1974), the Commission clearly indicated that it expects applicants to follow the unequivocal and explicit instructions contained in the *Primer*, and that significant failures in this regard will result in disqualification.

[12] The following description of its call-in program illustrates the manner in which Southeast relates its responsive programming to its ascertained needs: By this method [call-in program], it is felt that the station can deal with problems of young people by inviting educators and youth leaders on this program; a lack of recreational facilities can be discussed with the county officials concerned with such matters; race relationships can be discussed by having white and black leaders appearing together or separately to discuss these types of problems; pollution will be discussed by environmental leaders; housing can be discussed with builders as well as city officials involved in zoning and other matters; . . . Thus, these and many other problems will be discussed on this 'call-in program.' which, when no guests are available, will in part select topics on the basis of the surveys. . . .

[13] See *Cosmos Broadcasting Corporation*, 31 FCC 2d 200, 22 RR 2d 723 (1971); *Middle Georgia Broadcasting Co.*, 30 FCC 2d 796, 22 RR 2d 524 (1971); *Cf. Media, Inc.*, 41 FCC 2d 30, 27 RR 2d 1077 (1973); and *Azalea Corporation*, —— FCC 2d —— (1974).

(1971); *Cf. Brinsfield Broadcasting Company*, 19 FCC 2d 769, 17 RR 2d 325 (1969); *Cf. Frank M. Cowles*, 37 FCC 2d 405, 409 ruling 11, 25 RR 2d 475, 481 ruling 11 (1972), review denied FCC 73-877, August 22, 1973. Finally, the Board notes that Southeast's failures in this regard cannot be overlooked or excused on the grounds that they are merely technical errors or because it has complied with other parts of the *Primer*. If the requirement to provide sufficient programming to deal with ascertained needs is not enforced, the purpose of the *Primer* would be entirely frustrated and its application would become a meaningless exercise.

6. Accordingly, IT IS ORDERED, That the petition to re-open the record, for leave to amend, and to re-close the record, filed May 29, 1974, by Southeast Arkansas Radio, Inc., IS GRANTED and the amendment IS ACCEPTED; and

7. IT IS FURTHER ORDERED, That the application of Southeast Arkansas Radio, Inc. (File No. BP-18476) for a construction permit for a daytime-only standard broadcast station at Dermott, Arkansas, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
DONALD J. BERKEMEYER, *Member, Review Board.*

APPENDIX

RULINGS ON EXCEPTIONS OF SOUTHEAST ARKANSAS BROADCASTERS, INC. (KVSA)

Exception No.	*Ruling*
1, 2	Granted in substance. The exceptor's description of Southeast's first four survey efforts (1969-72) is an accurate reflection of the record.
3	Denied as being of no decisional significance. The relatively minor misstatements of fact contained in Southeast's February 6, 1973, amendment, were, upon discovery, corrected by the applicant in a subsequent amendment, filed February 23, 1973.
4	Denied. The Board construes the sentence excepted to mean that Southeast did a comprehensive job in surveying the needs of its proposed service area and the record evidence supports such a finding. With respect to the requested finding concerning Southeast's program proposal, such a finding is already in the Initial Decision. See paragraph 18 of the Initial Decision.
5, 6	Denied. The findings of the Administrative Law Judge accurately reflect the record evidence. In addition no basis is offered for Exception 6.
7	Granted to the extent indicated in our Decision and denied in all other respects as an inaccurate and/or incomplete reflection of the record, since the exception does not take Southeast's 1973 amendment into consideration. Thus, whether Southeast's initial general public surveys were designed to reach a random sample is no longer decisional significance since the applicant's 1973 amendment to its application includes a subsequent random general public survey which fully complies with the requirements of the Primer. Similarly, those survey efforts which were not conducted by persons designated as appropriate in the Primer have been disallowed. Also see Ruling on Exception 3, supra.

Exception No.	*Ruling*
8	Denied. The Presiding Judge's conclusions with respect to the public file issue are adequately supported by record evidence.
9	Granted to the extent indicated in our Decision and denied in all other respects as unsupported by the record evidence.

DISSENTING STATEMENT OF BOARD MEMBER SYLVIA D. KESSLER

In my view, even-handed application of existing standards[1] precludes the result reached by the majority opinion in the instant case involving a small market daytime only radio station. Stated a different way, it is my view that the denial here of an application solely upon the ground that "the very modest amount of broadcast matter proposed . . . does not satisfy the *Primer's* injunction that an applicant devote a significant proportion of its broadcast week to programming designed to meet the needs that it has ascertained," is inconsistent with the quantitative percentages established by Section 0.281(a)(8)(i) of the Commission's Rules delegating authority to the Chief of the Broadcast Bureau to grant an AM application where the percentage of total non-entertainment programming is not less than 8%. In the instant case, the applicant proposes 15% of non-entertainment programs (10% news, 2% public affairs, 3% all other programs, exclusive of entertainment and sports). Clearly, none of the cases relied upon by the majority including the Commission's most recent expression of opinion in *Voice of Dixie*, 45 FCC 2d 1027, —— RR 2d —— (1974), even begins to establish a different quantitative standard for determining whether "the means"[2] by which the applicant proposes to meet community problems are adequate. In each of these cases, marked deficiencies in the applicant's ascertainment survey, *per se*, constituted the major cause of adverse decisions requiring denial of the application; at most, the applicant's (a) failure to provide specific information regarding the relationship between its proposed programming and ascertained community problems, and (b) modicum of proposed programming to meet specific ascertained needs, constituted additional defects in its showing.

In the instant case, the applicant has met the basic ascertainment survey requirements, *per se*. Although the applicant's correlation of proposed programming and ascertained needs lacks the procedural specificity required by the *Primer*, it, nevertheless, does comport with prevailing substantative and quantitative requirements. Thus, in the instant case, Southeast's program proposal includes a weekly one hour "Call-In" program, a forty five minute report from state and federal representatives (Southeast Exhibit No. 2, p. 115), two hours of religious programming on Sunday,[3] a week-day 10 to 15 minute agricultural report which will be expanded to Saturday and Sunday if well accepted, and five minutes per hour newscast daily. With respect to the Call-In program, Southeast proposes to invite knowledgeable guests to discuss problems confronting the community. Guests would include community leaders such as educators and youth leaders, environmental leaders, mayors, and sheriffs. Witnesses for Southeast testified that they contacted people in every community to be served including public officials, county officials and welfare directors to see if they were willing to be a guest. They stated that the response was affirmative. (Southeast Exhibit No. 2, p. 99–100; Tr. 68–69.) In explaining why its proposed news programs can be regarded as partial satisfaction of the *Suburban* issue, Southeast notes that 10% of its programming will be devoted to news, 50% of which will be devoted to regional and local events (Southeast Exhibit No. 2, p. 99) and that many of the problems discovered, such as pollution control, will be treated by the news department to the extent that governmental agencies propose to enact legislation to deal with these problems. Compare *Risner Broadcasting Inc.*, 32 FCC 2d 75, 23 RR 2d 61 (1971), where news programming was not taken into account because there was no indication as to which community needs would be met through such programs.

---

[1] See *Robert E. Sanders*, 27 FCC 2d 72, 20 RR 2d 1111 (1971), in which the Review Board found that an applicant had proposed sufficient programming to meet ascertained needs where it proposed one hour and forty five minutes of local public affairs programming weekly, supplemented by a weekly one hour program related to local government and a thirty minute program dealing with local and regional problems.

[2] In this connection, it is to be noted that the existing *Suburban* issue, unlike the type of prior programming issue, speaks, in terms, of the "means" by which the applicant proposes to meet ascertained community problems. The prior programming issue read, as follows: "To determine the types and character of program service which would be broadcast by the applicant and whether the program service would meet the needs of the city to be served." For a more detailed discussion of the evolution of the language of the existing issue, see my dissent in *Saul M. Miller*, 38 FCC 1374, 5 RR 2d 880 (1965), and the Commission's Decision reversing the Review Board decision which denied one of the applications for failure to meet the *Suburban* issue, 4 FCC 2d 150, 8 RR 2d 148 (1966). While it is true that since the *Miller* case, *supra*, the Commission has promulgated the *Primer*, the standards set forth in the Primer must be considered in light of the issues, as well as Commission Rules establishing quantitative percentages permitting grants under delegated authority.

For the foregoing reasons, I would resolve the *Suburban* issue favorably to Southeast.

---

[3] One of the problems listed by Southeast in its survey was the need for more religion in life. (Southeast Exhibit No. 2, p. 97.)

FCC 73D-37

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of SOUTHEAST ARKANSAS RADIO, INC., DERMOTT, ARK. For Construction Permit	Docket No. 19474 File No. BP-18476

APPEARANCES

B. Jay Baraff, Esq. and *Martin A. Blumenthal, Esq.*, on behalf of Southeast Arkansas Radio, Inc.; *Lewis I. Cohen, Esq.* and *Robert N. Boyer, Esq.*, on behalf of Patrick H. Robinson; *Julian P. Freret, Esq.* and *R. M. Booth, Jr., Esq.*, on behalf of Robert C. Wagner; *Stephen A. Gold, Esq.* and *Mark E. Fields, Esq.*, on behalf of Southeast Arkansas Broadcasters, Inc. (KVSA); and *Robert B. Nelson, Esq.* and *A Thomas Carroccio, Esq.*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JAY A. KYLE

(Issued June 19, 1973; Released June 27, 1973)

PRELIMINARY STATEMENT

1. This proceeding involves the application of Southeast Arkansas Radio, Inc. (Southeast) for a construction permit for a new standard broadcast station to operate on 1110 kHz with a directional antenna, with power of 10 kw, during daytime hours only, at Dermott, Arkansas.

2. The application here under consideration was designated for hearing by a Memorandum Opinion and Order released March 24, 1972. In addition to the Southeast application, an application was filed by Patrick H. Robinson, Monroe, Louisiana, as well as one filed by Robert C. Wagner for a new standard broadcast station to be operated on the same frequency at Pineville, Louisiana. The Robinson application was dismissed with prejudice by an order released May 24, 1972 (FCC 72M-682).

3. In an effort to avoid a hearing, Southeast filed a petition for leave to amend on September 11, 1972, to sever Wagner's application and for approval of reimbursement proposal. This proposal was supported by Wagner and opposed by the Broadcast Bureau.

4. However, the Review Board on December 4, 1972 (38 FCC 2d 403) added the following issue against Southeast:

> To determine the efforts made by Southeast Arkansas Radio, Inc., to ascertain the community needs and interests of the area to be served and the means by which it proposes to meet those needs and interests.

Then, on January 5, 1973, the Review Board added the additional issues as follows against Southeast (38 FCC 2d 1187):[1]

> 1. To determine whether Southeast Arkansas Radio, Inc., will have available sufficient funds to sustain its proposed station during the second year of operation and, in light of the evidence adduced pursuant thereto, whether the applicant is financially qualified; and
>
> * * * * * * *
>
> 3. To determine whether Southeast Arkansas Radio, Inc. has complied with Section 1.594 of the Commission's Rules, and if not, the effect thereof upon the applicant's basic or comparative qualifications to be a Commission licensee; and
>
> 4. In the event that Southeast Arkansas Radio, Inc. should be deemed superior under the ordinary criteria of the Section 307(b) issue in the proceeding, to determine the extent to which programming of existing stations meet the local needs and interest of Dermott, Arkansas, and to determine in light of such evidence which of the applicants should be preferred under the 307(b) issue.

5. At a prehearing conference on January 15, 1973, the Presiding Judge ruled that he would accept Southeast's petition for leave to amend, to sever and for approval of reimbursement. This ruling was formalized by an order dated January 26, 1973 (FCC 73M-110) and the Bureau appealed this ruling on the basis that good cause was not shown for acceptance of the proposal. The Review Board, on March 16, 1973 (FCC 73R-119) granted the Bureau's appeal, but indicated that it agreed with the Administrative Law Judge that the proposal should be accepted, after compliance with Section 1.525 was achieved. Then on April 5, Southeast and Wagner filed a joint request, pursuant to Section 1.525, to sever their applications, amend the application of Southeast partially, reimburse Southeast and grant Wagner's application. No oppositions were filed to the joint request and it was granted by an order dated April 25, 1973 (FCC 73M-506). The grant of the request mooted all issues except those relating to the basic qualifications of Southeast to be a Commission licensee.

6. Thereafter prehearing conferences were held on May 1, May 31, 1972 and January 15 and March 28, 1973, and the hearings were held on September 12, 1972 and March 13, 1973. The record was closed on April 27, 1973; reopened to receive a petition for leave to amend and closed again on May 25, 1973. Proposed findings of fact and conclusions of law were filed on behalf of Southeast, Southeast Arkansas Broadcasters, Inc. (KVSA),[2] and the Broadcast Bureau on May 14, 1973 and reply findings were filed on behalf of Southeast on May 29, 1973.

7. It is pointed out that evidently the Review Board added the Suburban issue against Southeast primarily because of the apparent failure of Southeast's demographic survey to adequately locate the various groups comprising the community of Dermott, Arkansas, as required

---

[1] The Review Board had added a second issue which was deleted by an order released January 16, 1973.

[2] Located at McGehee, Arkansas.

by the "Primer". In addition, the Board expressed concern with the question of whether Southeast's consultations with the general public constituted a "random sample" of the public.

FINDINGS OF FACT

8. Southeast Arkansas Radio, Inc. seeks a construction permit for a new standard broadcast station to operate on 1110 kHz with a directional antenna and power of 10 kw during daytime hours only, at Dermott, Arkansas.

9. As the matter shapes up, there are only three issues here for consideration, namely , (1) Surburban issue; (2) financial issue; and (3) a Section 1.594 issue, commonly known as the public file issue. The Broadcast Bureau, in its proposed findings of fact and conclusions of law, concedes that Southeast has met its burden of proof under the Suburban issue.

10. Southeast has conducted several surveys to ascertain the community needs, problems and interests of its proposed service areas in Dermott and Chicot County, Arkansas. The initial survey was undertaken in conjunction with preparation of the Southeast application filed with the Commission in February 1969. A clarifying amendment to that survey was filed with the Commission on November 30, 1971. In addition, additional surveying was done in the fall of 1969 and submitted to the Commission in the form of an amendment on November 17, 1969. In this survey, several persons engaged in agriculture, including the owner of a cotton gin, a planter, and two farmers were surveyed. Further, the president of a Montrose, Arkansas Bank was surveyed as was the pastor of the African Methodist Episcopal Church at Montrose. Further, an amendment filed on November 30, 1971 dealt with the determination of community needs, and included a substantial showing on the demographic, economic and other significant characteristics of areas to be served by the applicant.

11. A further survey amendment was submitted to the Commission on December 30, 1971, the stated purpose of which was to continue to update data on community needs, but which also particularly included interviews with additional members of the Black community in the survey base. In addition, random surveys were undertaken on a "man-on-the-street" basis, as reflected in that amendment. Then additional surveys relating to the continuing ascertainment of community problems by Southeast were submitted to the Commission on January 20, February 22, and May 18, 1972, and on February 6, 1973.

12. Surveying of community leaders was undertaken by or under the direct supervision of Ben F. Ryburn, Sr., President of Southeast. Other surveying was done by Billy Calhoun, a Southeast officer and proposed general manager of the station and W. C. Nisler, the proposed assistant manager of the station.

13. The initial survey undertaken by Southeast was submitted to the Commission prior to its enunciation of standards in the "Primer", and thus that submission contained no specific differentiation between members of the general public and community leaders. But among leaders clearly listed as interviewed in that survey were the post-

mistress of Collins, Arkansas; the former Mayor of Dermott; pastor of the Dermott Presbyterian Church; superintendent of Dermott schools; a circuit judge in Dermott; the Mayor and postmaster of Parkdale, Arkansas; aldermen, postmaster and superintendent of schools and president of the Chamber of Commerce of Wilmot, Arkansas; president of the Chamber of Commerce of Parkdale, Arkansas; superintendent of the Drew County central schools of Monticello, Arkansas; a Monticello judge; president of the Civic Club; president of the Chamber of Commerce; president of the Lake and Plantation Garden Club; and commander of The American Legion (all in Lake Village, Arkansas); the sheriff of Chicot County; several professional people in Chicot County; Mayor, tax assessor, assistant chief of police, president of Citizen's Improvement Club, president of Lions' Club and president of The American Legion Auxiliary, all in Lake Village, Arkansas; president of the Lake Village Jaycees and Jaycettes; president, Chamber of Commerce, Mayor, city recorder, and several councilmen from Jerome, Arkansas; principal of the Drew High School at Monticello; pastor of the Pilgrim Rest African Methodist Episcopal Church at Monticello and Executive Vice President of the Commercial Bank and Trust Company of Monticello.

14. On November 30, 1971, an amendment was filed by Southeast, with surveys undertaken between September 9 and November 13, 1971. Seventy-five leaders from Dermott, Halley, Lake Village, Rison, Monticello, Hamburg, Crossett, Star City, Jerome, Arkansas City, McGehee and Chicot County, Arkansas, were included. Specific problems were noted for each interviewee, including those mentioned by the eight additional members of the Black community who were particularly sought out, since they do constitute a substantial portion of the Dermott community. Further, members of the general public were surveyed, from Dermott, Jerome, McGehee, Lake Village, and Dumas, all in Arkansas.

15. Again on December 30, 1971, an additional survey was submitted to the Commission in the form of an amendment. It is stated that the purpose of this amendment was to continue to update data on community needs, but also to again talk to additional members of the Black community. In addition, random surveys were undertaken on a "man-on-the-street" basis. Those surveyed at this time included 19 leaders or group representatives, of whom seven are Black, as well as 14 members of the general public from Dermott, Monticello, Bradley County, Lincoln County, Cleveland County, McGehee, Wilmot and Monticello.

16. On February 6, 1973, Southeast submitted an additional major amendment, revealing its further and continuing survey efforts. There was a detailed discussion of the characteristics of Dermott and surrounding areas, including two major cities of Chicot County, namely, Lake Village and Eudora. Those interviewed during this survey included five Black leaders; people in the entertainment industry; union leaders; and officials of the following Louisiana Parishes: Union, East Carroll, West Carroll, and Moorehouse. In addition, County officials from Washington County, Mississippi, were contacted as were County officials from Union and Calhoun Counties in Arkansas and two physicians.

17. During this survey effort, a major random survey of the general public was undertaken. Between January 1 and January 26, 1973, Ryburn and Calhoun contacted persons taken randomly from telephone books of the communities to be served by Southeast. There were 106 contacts made in this random telephone survey.

18. After completion of its major 1973 survey, Southeast reaffirmed its programming proposals, which would deal with all problems mentioned, with particular emphasis on its call-in program which was to be broadcast on Sunday for one hour.

19. This reaffirmation of programming supported the amendment filed with the Commission in late 1971. Therein, Southeast advised that it had reviewed its programming in light of the additional survey efforts that it had undertaken in late 1971, and concluded that its programming proposals would meet the needs, problems and interests reflected by its survey. The evidence is that Southeast did a comprehensive job in surveying the needs and desires respecting programming in the area it proposes to serve.

20. The Review Board in its Memorandum Opinion and Order released January 5, 1973 (FCC 73R-3) enlarged the issues against Southeast by adding an issue to determine whether Southeast will have sufficient funds available to sustain its station during its second year of operation. Southeast has proposed a second year budget which including a proposed five percent inflationary pressure, would require approximately $69,000 to operate the proposed station. Involved in this plan of financing is contingency funds of almost $9,000.

21. After the addition of the financial issue, in a letter dated January 29, 1973, Ben F. Ryburn, Sr. agreed to loan Southeast $150,000 to meet its second year expenses. Ryburn obtained a loan of $150,000 from the Union National Bank on January 23, 1973. The bank loan to Ryburn specified an interest rate of 1% above the prevailing New York prime rate, with interest due during the first year and payments of principal due in 84 equal monthly installments beginning 13 months after the loan is made. The bank loan was secured by payments due to Ryburn from Wal-Mart Properties [3] and was accepted by Ryburn in a letter to the bank dated January 25, 1973. Ryburn's loan to Southeast calls for interest to be paid at the same rate as that specified in the bank loan to Ryburn or, if Ryburn does not borrow from the bank, at 6½%. Ryburn requires no repayment of principal during the first 24 months of the loan and 120 equal monthly payments thereafter. He also states in his letter of commitment to Southeast that should the Southeast Board of Directors conclude that payments of principal cannot be made from available resources, they can be deferred until Southeast is able to meet the payments. Allowing for 10% interest payments, $135,000 of Ryburn's loan is available to meet second year costs.

22. In addition to the loan from Ryburn, Southeast relies on $36,000 in assets remaining from Southeast's first year financial cushion. Southeast's estimate of second year expenses also provides for a contingency fund of $8,900. Southeast no longer relies on revenue from first or second year operation to meet its second year expenses.

---

[3] Approximately $204,800 is due Ryburn from his contract with Wal-Mart Properties.

23. Turning now to the Section 1.594 issue (commonly known as the public file issue), it is established that at the time of the filing of the Southeast application in 1969, a public file was established at 101 South Main Street in Dermott. This was a gas station leased at that time by Billy Calhoun. In January 1970 Calhoun moved the public file and other papers of the stations to the office of Calhoun Insurance Company in a renovated garage behind his home at 700 West Speedway in Dermott. There was no staff located at that address and Calhoun was not continuously present during business hours at the renovated garage. He testified that he gave instructions to members of his family who lived in the adjoining house to show the file to any person requesting to see it. He also added that there were no requests to see the file during this period of time. Notice of the location of Southeast's public file at this new location was not published until April 5, 1972 when notice of the designation of the Southeast application for hearing was first published in the *Dermott News*, a local newspaper.

24. Subsequently, on or about June 9, 1972, the file was placed at the office of the City Clerk, City Hall, Dermott, Arkansas. Notice of the location of the file in the City Clerk's office was published in the Dermott paper June 21, June 28 and July 5, 1972. The City Clerk's office is open between 8 a.m. and 4:30 p.m. on week days and until noon on Saturday. However, there was an affidavit filed by one Eastham, an agent for Station KVSA located in McGehee, Arkansas. Official notice of Eastham's affidavit dated April 4, 1972 was requested by the Broadcast Bureau and is hereby granted. In his affidavit Eastham alleges that on April 4, 1972 he visited the location of the public file specified in Southeast's March 1969 notice and he alleged that on his visit to the gas station he was unsuccessful in locating Southeast's public file. He stated that he was told by one Alvin Torrence, the attendant in the gas station, that Calhoun had the file and that Calhoun visited 101 South Main Street in Dermott "about every day". It is noted here again that this address is that of the service station. Eastham's affidavit further reads that Torrence, the station attendant, attempted to contact Calhoun by telephone for about 50 minutes. Calhoun testified that he did not instruct the gas station attendant relative to the moving of the file although his affidavit indicated that both the lessee and sublessee of the station knew where he lived and they could refer any inquiries to him. As related above, Calhoun moved the file on June 9, 1972 to the office of the City Clerk, City Hall, in Dermott. The public file is now maintained in the office of the City Clerk in Dermott. Catherine Alexander is City Clerk and Recorder of the City of Dermott and has charge of the file at that location.

CONCLUSIONS

1. Originally there were three applicants for the facilities here involved but two fell by the wayside leaving only one applicant, namely, Southeast Arkansas Radio, Inc., which seeks a construction permit for a new standard broadcast station to operate on 1110 kHz with a directional antenna and power of 10 kw during daytime hours only, at Dermott, Arkansas.

2. As heretofore indicated, there are three issues confronting Southeast, namely, (1) Suburban issue; (2) financial issue; and (3) a Section 1.594 issue, commonly known as the public file issue.

3. The Broadcast Bureau concedes that the applicant has met the Suburban issue.

4. The record is replete that the principals of the applicant conducted several surveys to ascertain the community needs, problems and interests of its proposed service area. The determination of its programming from the record was developed as a result of these numerous surveys in Dermott and Chicot County.

5. It is evident that consideration has been accorded by the applicant to the problems discussed and raised in interviews in considering the programming proposed by Southeast. It must be concluded that Southeast has adequately ascertained the problems, needs and interests of its proposed service area and has demonstrated that it has the means to develop programming to meet these needs of Dermott and Chicot County.

6. The financial issue is likewise readily disposed of from the evidence in this proceeding. The President of Southeast, Ben Ryburn, Sr. has agreed to loan the corporation $150,000 with interest only required to be repaid in the first year. The ability of Ryburn to make this loan is supported by a letter dated January 23, 1973 from the Union National Bank. The applicant actually relies on $36,000 in assets remaining from Southeast's first year financial cushion and its estimate for the second year expenses provides a contingency fund of $8900. The applicant contemplates having a surplus of almost $60,000 for meeting unforeseen financial obligations in the second year. And, finally, Southeast no longer relies on revenues from the first or second year operations to meet its second year expenses.

7. At the time of filing the Southeast application in 1969, a public file was maintained at 101 South Main Street in Dermott. This was a gas station leased by Billy Calhoun. In January 1970 the file was moved to 700 West Speedway Street in Dermott in a building which was adjacent to Calhoun's home which houses his office. The attendant at the service station did not know of this move to Calhoun's home and accordingly was not given any instructions concerning the matter. However, the evidence is clear that Calhoun instructed members of his family living next door to show the file to anyone requesting to see the same. When the Southeast public file was moved to the West Speedway address, notice of the new location was not published until April 5, 1972 when notice of the designation of the Southeast application for hearing was first published in the *Demott News*, a local newspaper.

8. Sometime around June 9, 1972, the file was placed in the office of the City Clerk, City Hall, in Dermott, where it still remains. The office of the City Clerk is open on week days between 8:00 a.m. and 4:30 p.m. and until noon on Saturday.

9. There was an affidavit submitted by one Eastham, an agent for Station KVSA located in McGehee, Arkansas, that he endeavored on April 4, 1972 to view the public file at the location specified in Southeast's March 1969 notice. His affidavit recites that his visit to the gas

station was unsuccessful in locating Southeast's public file. However, the gas station attendant told the representative of Station KVSA that Calhoun visited the station location in Dermott "about every day".

10. In view of the foregoing findings of fact and conclusions of law and upon careful evaluation of the entire record in this proceeding, it is concluded that a grant of the application of Southeast Arkansas Radio, Inc. for a construction permit for a new standard broadcast station to operate on 1110 kHz with a directional antenna and power of 10 kw daytime only, in Dermott, Arkansas, would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by the applicant, or the Commission reviews the Initial Decision on its own motion, in accordance with the provisions of Section 1.276 of the Commission's Rules, the application of Southeast Arkansas Radio, Inc. for a construction permit for a new standard broadcast station to operate on 1110 kHz, with a directional antenna and power of 10 kw, daytime only, at Dermott, Arkansas, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
JAY A. KYLE, *Administrative Law Judge.*

FCC 74-714

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SPECTRUM COMMUNICATIONS, INC., WESTFIELD, MASS. For Licenses and Construction Permits in the Cable Television Relay Service	CLCP-15, CLCAR-199, CPCAR-597, CPCAR-598, CPCAR-606

MEMORANDUM OPINION AND ORDER

(Adopted July 2, 1974; Released July 10, 1974)

BY THE COMMISSION:

1. Spectrum Communications, Inc., has filed the above-captioned unopposed applications for microwave radio stations in the Cable Television Relay Service. The requested facilities are necessary to relay television broadcast and local origination signals to cable television systems at Agawam, West Springfield and Westfield, Massachusetts. The cable television systems are operated by Spectrum's wholly owned subsidiary, Spectrum Cable Systems, Inc. The Commission has granted certificates of compliance (CAC-381, CAC-601, CAC-602) for operation of the systems, *Spectrum Systems, Inc.*, FCC 73-257, 40 FCC 2d 1019, *recon. denied*, FCC 73-1342, 44 FCC 2d 1010, and a construction permit (CPCAR-342) authorizing facilities to relay the signals of five television broadcast stations from East Mountain in Westfield to three separate receiving points located in Agawam, Westfield and West Springfield, Massachusetts *Spectrum Communications, Inc.*, FCC 73-348, 40 FCC 2d 467, *recon. denied*, FCC 73-1342, 44 FCC 2d 1010. The Springfield Television Broadcasting Corporation and the WHYN Stations Corporation have petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the cited Commission actions granting the certificates and the construction permit, appeal pending sub nom. *Springfield Television Broadcasting Corporation* v. *Federal Communications Commission* (Civ. No. 74-1214, D.C. Cir.), *WHYN Stations Corporation* v. *Federal Communications Commission* (Civ. No. 74-1217, D.C. Cir.)

2. Spectrum now requests CARS licenses to cover the facilities constructed to relay the television signals (CLCAR-199), and to authorize a cable television relay pickup station to relay local origination programming from various nearby locations (CLCP-15). Spectrum also requests grants of three construction permits. The first (CPCAR-598) is necessary to permit modification of its already constructed station in order to add channel capacity to relay an additional television broadcast signal as well as four local origination signals. The

second (CPCAR-606) will permit construction of a microwave facility to relay the signals of Stations WSBK-TV, Boston, Massachusetts, and WKBG-TV, Cambridge, Massachusetts, to Spectrum's primary receive point for distribution to headends located in each community. The third (CPCAR-597) will permit construction of a radio station to relay local origination programming from the studio of educational Station WGBY-TV, Springfield, Massachusetts, to the primary receive point.

3. We find that Spectrum Communications, Inc., is a qualified and eligible applicant, and that the public interest, convenience and necessity will be served by grant of the requested licenses and construction permits; however, in view of the pending appeal, we condition the grants to provide that the Commission may take whatever steps it deems appropriate after the Court renders its decision

Accordingly, IT IS ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, and Part 78 of the Commission's Rules, that the above-captioned applications filed by Spectrum Communications, Inc., ARE GRANTED subject to the condition set forth in paragraph three, above

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74-692

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
STAUNTON VIDEO CORP., STAUNTON, VA.
Request for Special Relief
CSR-507
VAO49

MEMORANDUM OPINION AND ORDER

(Adopted June 26, 1974; Released July 9, 1974)

BY THE COMMISSION:

1. On February 11, 1974, Staunton Video Corporation, operator of a cable television system at Staunton, Virginia, filed a "Petition for Waiver" (CSR-507), requesting a waiver of Sections 76.91 and 76.93 of the Commission's Rules[1] in order to deny network program exclusivity to Station WVIR-TV, Charlottesville, Virginia. On March 11, 1974, Virginia Broadcasting Corporation, licensee of Station WVIR-TV, Charlottesville, Virginia, filed a "Request for Cease and Desist Order and Opposition of Virginia Broadcasting Corporation to Petition for Waiver" in which it asks the Commission to order Staunton Video to accord program exclusivity to WVIR-TV. On April 1, 1974, Staunton Video filed its "Opposition to Petition for Waiver." And on April 22, 1974, Virginia Broadcasting filed its "Reply of Virginia Broadcasting Corporation to Opposition to Request for Cease and Desist Order."[2]

2. Staunton, Virginia, is located within the Harrisonburg and Charlottesville, Virginia, smaller television markets. Staunton Video operates a twelve-channel cable television system which provides more than 6,000 subscribers with the following broadcast television signals:

WVPT (Educ., Ch. 5) Staunton, Virginia
WSVA-TV (ABC/NBC, Ch. 3) Harrisonburg, Virginia

---

[1] Section 76.91(a) provides: Any cable television system operating in a community in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programming against lower priority duplicating signals, but not against signals of equal priority in the manner and to the extent specified in §§ 76.93 and 76.95.

Section 76.93(a) provides: Where the network programming of a television station is entitled to program exclusivity, the cable television system shall, on request of the station licensee or permittee, refrain from simultaneously duplicating any network program broadcast by such station, if the cable operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. On request of the cable system, such notice shall be given no later than the Monday preceding the calendar week (Sunday-Saturday) during which exclusivity is sought.

[2] Staunton Video subsequently filed a "Response to Reply of Virginia Broadcasting Corporation," on May 5, 1974. As Staunton Video noted, this type of pleading is not contemplated by our rules. We will consider Staunton Video's "Response" as informal comments, however, in light of the complex nature of this proceeding.

WLVA-TV (ABC, Ch. 13) Lynchburg, Virginia
WTVR-TV (CBS, Ch. 6) Richmond, Virginia
WWBT (NBC, Ch. 12) Richmond, Virginia
WXEX-TV (ABC, Ch. 8) Petersburg, Virginia
WRC-TV (NBC, Ch. 4) Washington, D.C.
WMAL-TV (ABC, Ch. 7) Washington, D.C.
WTOP-TV (CBS, Ch. 9) Washington, D.C.
WTTG (Ind., Ch. 5) Washington, D.C.
WVIR-TV (NBC, Ch. 29) Charlottesville, Virginia

Staunton, Virginia is located within thirty to thirty-five miles of Charlottesville, Virginia, and thus is within WVIR-TV's specified zone.

3. In *Staunton Video Corporation*, FCC 73-1005, 42 FCC 2d 1119, we denied Staunton Video's request for a waiver of Section 76.59(a)(1) of the Commission's Rules in order not to carry WVIR-TV's signal. We there noted, Par. 4, that "WVIR-TV's failure to place a Grade B contour over Staunton, Virginia, in no way relieves Staunton Video of its obligation to carry the station pursuant to Section 76.59(a)(1)." Our prior decision thus rested on the proposition that a smaller market cable television system must carry a broadcast television signal if the system is located within either the station's actual Grade B contour or its specified zone. Staunton Video has come into compliance with our prior decision by carrying WVIR-TV, but now requests a waiver of its obligation to accord WVIR-TV exclusivity against other NBC affiliates.

4. WVIR-TV argues that it is entitled to exclusivity on the grounds that it is licensed to serve Staunton, that Staunton and Charlottesville have a "community of interest," and that the other NBC affiliates carried by Staunton Video are located much further away. It also maintains that it is a "struggling UHF television station" and that it particularly needs exclusivity protection from Staunton Video, since more than a quarter of its potential audience subscribes to Staunton Video.

5. Staunton Video argues that it need not provide exclusivity to WVIR-TV, however, on the ground that WVIR-TV fails to place an actual Grade B or other contour over Staunton, Virginia. Staunton Video thus claims not that it is located in a "pocket of poor reception," but rather that WVIR-TV fails to place any actual contour to the west of the Blue Ridge Mountains, which stand between Charlottesville and Staunton. On the other hand, WVIR-TV admits that it does not place an actual Grade B contour over Staunton, but asserts that Staunton merely is a "pocket of poor reception." WVIR-TV thus argues that under both our prior *Staunton Video* decision and existing Commission precedent[3] it need not install a translator station in order to receive exclusivity. We reject WVIR-TV's arguments and grant the requested waiver for the following reasons.

---

[3] See discussion in Par. 8, *infra*.

6. As is evident from their very language, our exclusivity rules use different criteria than our carriage rules. While Section 76.59(a)(1) thus requires carriage of any station "within whose specified zone the community of the system is located,"[4] Section 76.91(a) requires a cable system to accord exclusivity only if its community is "within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station." Accordingly, a station may be entitled to carriage because a cable system is within its specified zone, but may not be entitled to exclusivity because it fails to place an actual Grade B contour over the cable system's community. Indeed, as we noted in our *Cable Television Report and Order*, FCC 72-108, 36 FCC 2d 143, Par. 98, "with respect to network television programming, we are retaining this system of priorities .... we retain the precedents and policies evolved under the prior rule." At the same time, however, we made a major and express change in our carriage rules by adopting the specified zone concept. As our prior *Staunton Video Corporation* decision, *supra*, Par. 4, noted:

> Indeed, we carefully tailored the specified zone carriage requirement to protect UHF stations such as WVIR-TV, which have comparatively small actual Grade B contours. In Paragraph 82 of the *Cable Television Report and Order* we noted that the specified zone carriage requirement would insure that "less powerful stations . . . will be capable of extending their coverage into the area that we have determined is generally necessary for the development of broadcast stations.

Accordingly, the carriage and exclusivity rules are desgined to protect two different sets of interests. While the carriage rules require that all stations have access to audiences within their specified zone, the exclusivity rules provide protection only where a station places a predicted or actual Grade B or higher contour over a cable system's community.

7. As noted before, WVIR-TV admits that it does not place a Grade B contour over Staunton, Virginia. Indeed, the parties differ only as to whether Staunton is part of a generally "white" area or whether it is an isolated "pocket of poor reception." Staunton Video's engineering study indicates that WVIR-TV simply does not place an actual Grade B contour west of the Blue Ridge Mountains. We do not and need not, though, reach the merits.

8. If WVIR-TV in fact does not place an actual Grade B contour over the entire area to the west of the Blue Ridge Mountains, Staunton Video has no obligation to accord it exclusivity. On the other hand, if Staunton is merely a "pocket of poor reception," WVIR-TV is entitled to exclusivity only if it installs a translator station to serve Staunton. In *Community Service, Inc.*, 21 FCC 2d 719 (1970) we re-

---

[4] Section 76.59(a)(1) provides: A cable television system operating in a community located in whole or in part within a smaller television market, as defined in § 76.5, shall carry television broadcast signals only in accordance with the following provisions: (a) Any such cable television system may carry or, on request of the relevant station licensee or permittee, shall carry the signals of: (1) Television broadcast stations within whose specified zone the community of the system is located, in whole or in part.

quired a television station to install a translator as a condition to receiving exclusivity protection, since the station did not place an actual Grade B contour over the cable system's community. See also *Bluefield Television Cable, Inc.*, FCC 67-1247, 10 FCC 2d 713; *Shen-Heights TV Association*, FCC 68-168, 11 FCC 2d 814. Though we previously have held *Community Service* to be of questionable validity as applied to the specified zone carriage requirement,[5] its principle retains its validity as to our exclusivity rules; as noted in Paragraph 6, *supra*, we carried over our prior exclusivity rules virtually unchanged. Under the *Community Service* doctrine, WVIR-TV thus would be entitled to exclusivity only if it installed a translator station to serve Staunton, Virginia.

9. To be sure, *Community Service* recognized that special circumstances might justify an exception to its general rule. We find no such circumstances, however, in this case. WVIR-TV argues that it cannot install a translator, pursuant to Section 73.623(a) of the Commission's Rules, since Staunton, Virginia, is located within the West Virginia Quiet Zone.[6] But WVIR-TV never has applied for permission to operate a translator within the Quiet Zone; moreover, WVIR-TV admits that a translator station probably could be authorized for the Quiet Zone, although at an extra cost of $5,000 to $10,000, *Community Service* never contemplated and we can not hold that additional expenses constitute special circumstances.

10. Accordingly, the *Community Service* doctrine requires WVIR-TV to install a translator serving Staunton, Virginia, in order to be entitled to exclusivity protection. In light of the long-term litigation between the parties, however, we feel that an outright grant of Staunton Video's request for waiver would be inappropriate. If nothing else, WVIR-TV should have a chance to install a translator. Accordingly, we will deny Staunton Video's request for waiver, upon the condition that WVIR-TV apply for a construction permit to operate a television translator station serving Staunton, Virginia, within ninety days from the release date of this Memorandum Opinion and Order and that WVIR-TV commence such translator service within ninety days after a grant of such application.

In light of the foregoing, the Commission finds that denial of the requested waiver would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Waiver" (CSR-507) filed by Staunton Video Corporation IS DENIED UPON CONDITION that WVIR-TV file an application for a television translator station serving Staunton, Virginia, within ninety (90) days from the release date of this Memorandum Opinion and Order and that WVIR–TV commence such translator service within ninety (90) days after a grant of such application.

---

[5] In our prior *Staunton Video Corporation* decision, supra, Par. 5, we noted that "*Community Service* arose under earlier rules, which lacked any counterpart to the specified zone carriage requirement. . . . Though *Community Service* made eminently good sense under the earlier rules, its continued application would create an implied exception to the specified zone carriage requirement." Our prior decision deliberately refrained, however, from passing on *Community Service's* applicability to questions of exclusivity.

[6] Section 73.623(a) requires any proposed television station "within the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south, and 80°30′ W. on the west" to secure the prior approval or acquiesence of the National Radio Astronomy Observatory.

IT IS FURTHER ORDERED, That the "Request for Cease and Desist Order and Opposition of Virginia Broadcasting to Petition for Waiver" filed by Virginia Broadcasting Corporation IS DENIED.

Federal Communications Commission,
Vincent J. Mullins, *Secretary.*

FCC 74-705

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 93, SECTION 93.156 OF THE RULES AND REGULATIONS TO EXEMPT RAILROAD COMPANIES, ENGAGED IN "RUN-THROUGH" OPERATIONS, FROM COMPLIANCE WITH THE REQUIREMENT TO AFFIX TRANSMITTER IDENTIFICATION CARDS TO LICENSED MOBILE TRANSMITTERS	RM-2022

MEMORANDUM OPINION AND ORDER

(Adopted July 2, 1974; Released July 8, 1974)

BY THE COMMISSION:

1. The Association of American Railroads (AAR) has petitioned the Commission, in effect, to exempt its members who are engaged in "run-through" train operations from having to comply with the provisions of Section 93.156(a) of the Rules.[1]

2. In support of its petition, the AAR notes that in the past, compliance with this rule requirement was not burdensome because each railway operated its trains on its own tracks and the radio equipment was licensed to and was operated by one company. A licensee railroad was, therefore, only required to affix to its transmitters a card containing its own names, address and call sign. The petitioner continues, however, that recent changes in railway operation and management techniques have made present compliance with this rule section unduly burdensome. Specifically, the petitioner points to the recently developed practice in railroad operations which permits a train to proceed from its point of origin over the tracks of several participating railway companies, and arrive at its final destination without changing either the locomotive or the caboose. This mode of operation (known as "run-through") eliminates delays and permits maximum use of mainlines, freight cars and manpower. However, it also requires participants to use multiple license transmitters capable of operating on a number of frequencies so that as a train passes from one track to another, the transmitter may be operated by the employees, and under the license of, the company owning that segment of track. Each transmitter, therefore, must bear an identification card listing the call signs, names, and addresses of all potential run-through participants. Since virtually every major railroad has become involved in run-through operations, compliance either requires a large

---

[1] Among other things, Section 93.156(a) of the Commission's Rules requires a licensee who is operating a fixed, mobile or base station in any of the Land Transportation Radio Services to affix to their transmitters cards containing the licensee's name, address and call signs.

card permanently affixed to each transmitter bearing the names, addresses and call signs of all potential licensees, or a plethora of individual cards which must be changed as different track segments are crossed.

3. The Commission has considered AAR's request and has concluded that it is in the public interest to exempt railway companies from the requirement of Section 93.156(a) in so far as it applies to radio transmitters in railroad rolling stock. We have reached this conclusion primarily because, as a practical matter, field inspections of railroad mobile transmitters rarely, if ever, occur without some railroad representative being present. This representative is, therefore, able to provide the name, address and call signs of the licensee under whose authorization the transmitters are currently being operated, thereby satisfying the purpose of Section 93.156(a). Since the usefulness of the identification card is marginal at best in these situations, and since the industry has demonstrated the burdensomeness of compliance, the Commission is of the opinion that the requirement should be eliminated. Furthermore, we feel that adoption of this rule amendment is in keeping with the advances made in railroad operation and management methodology and will best serve the public interest.

4. The Commission is of the opinion that it may adopt the rule amendment without first following the prior notice and procedures prescribed by Section 4(a) of the Administrative Procedure Act, 5 USC Section 553. This amendment, which was requested by the railroad industry, will only affect railroad licensees, who are expected to support it, and, since no one else would have an interest in this matter, no useful purpose would be served by soliciting comments.

5. Accordingly, IT IS ORDERED, pursuant to the authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, that effective July 16, 1974, Part 93 of the Commission's Rules is amended as set forth in the attached Appendix. IT IS FURTHER ORDERED That RM-2022 is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

APPENDIX

Part 93 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 93.156(a) is amended by the addition of a sentence at the end of the paragraph to read as follows:

§ 93.156 Posting station licenses and transmitter identification cards or plates.

(a) The current authorization for each mobile station and each base or fixed station authorized to be operated at temporary locations shall be retained as a permanent part of the station records, but need not be posted. In addition, an executed Transmitter Identification Card (FCC Form 452-C) or a plate of metal or other durable substance, legibly indicating the call sign and the licensee's name and address, shall be affixed readily visible for inspection, to each of such transmitters: Provided, That, if the transmitter is not in view of the operating position or is not readily accessible for inspection, then such card or plate shall be affixed to the control equipment at the transmitter operating position or posted adjacent thereto. Provided further, that the posting of the Transmitter Identification Card is not required on radio transmitters operating on railroad rolling stock.

* * * * * * *

FCC 74-592

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In Re Applications of	
Twin Country Trans-Video, Inc.	
Allen Township, Pa.	CAC-3372 (PA551)
Allentown, Pa.	CAC-3373 (PA552)
Bath, Pa.	CAC-3374 (PA553)
Bethlehem Township, Pa.	CAC-3375 (PA554)
Bethlehem, Pa.	CAC-3376 (PA555)
Catasauqua, Pa.	CAC-3377 (PA556)
Chapmans, Pa.	CAC-3378 (PA 721)
Coplay, Pa.	CAC-3379 (PA557)
East Allen Township, Pa.	CAC-3380 (PA558)
Fountain Hill, Pa.	CAC-3381 (PA559)
Freemansburg, Pa.	CAC-3382 (PA560)
Hanover Township (Lehigh County), Pa.	CAC-3383 (PA561)
Hanover Township (Northampton County), Pa.	CAC-3384 (PA562)
Heidelburg Township, Pa.	CAC-3385 (PA20C)
Hellertown, Pa.	CAC-3386 (PA720)
Lehigh Township, Pa.	CAC-3387 (PA563)
Lower Macungie, Pa.	CAC-3388 (PA564)
Lower Saucon Township, Pa.	CAC-3389 (PA565)
Moore Township, Pa.	CAC-3390 (PA566)
North Catasauqua, Pa.	CAC-3391 (PA567)
Northampton, Pa.	CAC-3392 (PA568)
North Whitehall, Pa.	CAC-3393 (PA569)
Salisbury Township, Pa.	CAC-3394 (PA570)
South Whitehall, Pa.	CAC-3395 (PA571)
Upper Macungie, Pa.	CAC-3396 (PA718)
Upper Saucon Township, Pa.	CAC-3397 (PA719)
Whitehall Township, Pa.	CAC-3398 (PA572)

Memorandum Opinion and Order

(Adopted June 5, 1974; Released June 12, 1974)

By the Commission: Commissioner Reid concurring in the result; Commissioner Quello not participating.

1. Twin County Trans-Vindeo, Inc., has filed applications for certificates of compliance to add the signal of WNET (Educ., Channel 13) Newark, New Jersey, to existing cable television systems in the above-captioned communities which are located outside of all televi-

sion markets. Twin County is presently carrying the following television broadcast signals:[1]

WBRE-TV (NBC, Channel 28) Wilkes-Barre, Pennsylvania
WNEP-TV (ABC, Channel 16) Scranton, Pennsylvania
WDAU-TV (CBS, Channel 22) Scranton, Pennsylvania
WTAF-TV (Ind., Channel 29) Philadelphia, Pennsylvania
WPVI-TV (ABC, Channel 6) Philadelphia, Pennsylvania
WPHL-TV (Ind., Channel 17) Philadelphia, Pennsylvania
WKBS-TV (Ind., Channel 48) Burlington, New Jersey
WCAU-TV (CBS, Channel 10) Philadelphia, Pennsylvania
KYW-TV (NBC, Channel 3) Philadelphia, Pennsylvania
WLVT-TV (Educ., Channel 39) Allentown, Pennsylvania
WNEW-TV (Ind., Channel 5) New York, New York
WOR-TV (Ind., Channel 9) New York, New York
WPIX (Ind., Channel 11) New York, New York
WCBS-TV (CBS, Channel 2) New York, New York
WNBC-TV (NBC, Channel 4) New York, New York
WABC-TV (ABC, Channel 7), New York, New York
WHP-TV (CBS, Channel 21) Harrisburg, Pennsylvania
WTPA (ABC, Channel 27) Harrisburg, Pennsylvania
WGAL-TV (NBC, Channel 8) Lancaster, Pennsylvania
WLYH-TV (CBS, Channel 15) Lancaster, Pennsylvania
WNJU-TV (Ind., Channel 47) Linden, New Jersey
WXTV (Ind., Channel 41) Paterson, New Jersey

Carriage of WNET would be consistent with Section 76.57(b) of the Commission's Rules. No objection has been filed opposing carriage of the signal. However, the applicant and Lehigh Valley ETV Corp., licensee of WLVT-TV (Educ.) Allentown, Pennsylvania have entered into an agreement whereby they request that the certificate of compliance be granted subject to the following conditions:[2]

(1) To carry only programs of WNET that are not carried by WLVT-TV.

(2) That all community fund-raising announcements carried by WNET be deleted, along with carriage of WNET's "Pledge Week" programming.

(3) That carriage of day-time instructional school service programming by WNET be deleted.

2. Although, the Commission does not look with disfavor upon private agreements between cable television operators and broadcasters that endeavor to work out accommodations which serve the public interest, we are reluctant to condition the grant of a certificate of compliance on such a private agreement. To do so, would be tantamount to the Commission delegating part of its public trust to private interests. Commission Rules provide that cable television systems outside all markets shall have unrestricted signal carriage. While we presume that Twin County will voluntarily honor its agreement, WLVT-TV is not without recourse in the event of breach. WLVT-TV would, in any event, have standing to file a request for special relief alleging whatever harm it believed had been done and requesting the

---

[1] Twin County has a 28-channel capacity system.

[2] The conditions were submitted with the knowledge and consent of WNET.

Commission to delete or restrict carriage of WNET. Furthermore, it should be noted that pursuant to our rules, Twin County Trans-Video is required upon request to provide network program exclusivity for WLVT-TV against WNET. Consequently, even were we disposed to formally write the parties' agreement into the certificate, the first provision of the agreement would be unnecessary for simultaneously telecast programming.[3]

In view of the foregoing, the Commission finds that an unconditional grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the applications for certificates of compliance (CAC-3372 through CAC-3398) filed by Twin County Trans-Video, Inc., ARE GRANTED and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

---

[3] On May 3, 1974 Twin County filed amendments to its applications requesting a waiver of Section 76.55(b) of the Commission's Rules. The waiver was requested on the erroneous assumption that the said section would prohibit the deletion of any programming of WNET. Because we are granting the certificates of compliance without the requested conditions of limited carriage, the waiver request is thereby rendered moot.

FCC 74-610

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Applications of
WESTERN UNION TELEGRAPH CO.
For Construction Permits for Additional Antenna and Associated Equipment at Five Earth Stations
} File Nos. 21-25-DSE-P-74

ORDER

(Adopted June 12, 1974; Released June 13, 1974)

BY THE COMMISSION:

1. The Commission has pending before it applications filed by Western Union Telegraph Company (Western Union) on May 1, 1974 for an additional antenna and associated equipment at each of its five earth stations, and a request for waiver pursuant to Section 319(d) of the Communications Act to permit Western Union to contract immediately for procurement of the antennas and equipment.

2. In support of the request for waiver Western Union states that the additional antennas are needed to provide service via its second satellite, for sun outage protection, ranging and testing on the second satellite, and emergency backup for the prime antenna at each earth station. Western Union's present schedule calls for completion of construction by February, 1975, in time to afford sun outage protection during the Spring 1975 equinox. This schedule is also in line with Western Union's plans for the operational status of the second satellite. In order to achieve this schedule, Western Union asserts that it is necessary to enter into procurement contracts now. The contracts are estimated to total not more than $4.1 million.

3. Upon consideration of the showing made by Western Union, we conclude that the public interest would be served by a grant of a partial waiver of construction permits.

4. Accordingly, IT IS ORDERED, that Western Union IS GRANTED a partial waiver of construction permits pursuant to Section 319(d) of the Communications Act to permit it to enter into procurement contracts for additional antennas and associated equipment as described in the above-captioned applications. This action does not constitute any determination on the merits of such applications for construction permits or in any way prejudge the Commission's disposition of any issues pertaining to the subject applications. Any payment made by Western Union towards construction of such additional antennas and associated equipment shall be undertaken entirely at the risk of the stockholders of Western Union. This waiver is issued upon the express condition that in the event the above-cap-

tioned applications are not ultimately granted, any related procurement and construction cost incurred pursuant to this waiver will not be included in any rate base of Western Union, or charged to expense for rate purposes, but will be charged wholly against the stockholders of Western Union.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*